95-1407

No. _____

Supreme Court, U.S.
FILED
MAR 4 1996
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

STATE OF MARYLAND,
Petitioner,

v.

TYRONE JEROME GADSON,
Respondent.

On Petition For Writ of Certiorari
To The Court of Appeals of Maryland

PETITION FOR WRIT OF CERTIORARI

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

Gary E. Bair*
Mary Ellen Barbera
Thomas K. Clancy
Assistant Attorneys General

Office of the Attorney General
200 Saint Paul Place
Baltimore, Maryland 21202
(410) 576-6422

Counsel for Petitioner

**Counsel of Record*

19 pp

QUESTION PRESENTED

Is it reasonable under the Fourth Amendment to momentarily detain a visitor at a prison drug checkpoint to conduct a canine scan of the exterior of that visitor's vehicle, rather than the less intrusive procedure of permitting the visitor to leave the prison grounds after he is advised of the scan?

PARTIES TO THE PROCEEDING

The caption contains the names of all the parties below.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING ii

OPINIONS BELOW 1

STATEMENT OF JURISDICTION 2

CONSTITUTIONAL PROVISION INVOLVED ... 2

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE WRIT 7

I. BASED ON CONFLICTING LANGUAGE IN THIS COURT'S OPINIONS, MANY FEDERAL AND STATE COURTS CONTINUE TO EXAMINE LESS INTRUSIVE ALTERNATIVES AS AN ELEMENT OF REASONABLENESS 8

II. THIS COURT SHOULD ESTABLISH THE STANDARD OF REASONABLENESS FOR INTRUSIONS DIRECTED AT PRISON VISITORS 14

CONCLUSION 20

TABLE OF AUTHORITIES

Page

Cases:

Alexander v. City and County of San Francisco, 29 F.3d 1355 (9th Cir. 1994), *cert. denied*, 115 S. Ct. 735 (1995) 12
Barreras v. New Mexico Corrections Dep't, 838 P.2d 983 (N.M. 1992) 12
Baughman v. State, 45 Cal. Rptr. 2d 82 (Cal. App. 1995) 12
Bell v. Wolfish, 441 U.S. 520 (1979) 10, 15
Berger v. New York, 388 U.S. 41 (1967) 10
Blackburn v. Snow, 771 F.2d 556 (1st Cir. 1985) 19
Cady v. Dombrowski, 413 U.S. 433 (1973) 9
Camara v. Municipal Court, 387 U.S. 523 (1967) 10
Chapman v. Nichols, 989 F.2d 393 (10th Cir. 1993) 11
Colorado v. Bertine, 479 U.S. 367 (1987) 8
Del Raine v. Williford, 32 F.3d 1024 (7th Cir. 1994) 11
Delaware v. Prouse, 440 U.S. 648 (1979) 10
Estes v. Rowland, 17 Cal. Rptr. 2d 901 (Cal. App. 1993) 12, 15
F.E.R. v. Valdez, 58 F.3d 1530 (10th Cir. 1995) . 11
Florida v. Royer, 460 U.S. 491 (1983) 9, 12
Gaines v. State, 888 S.W.2d 504 (Tex. App. 1994) 13
Gettleman v. Werner, 377 F. Supp. 445 (W.D. Pa. 1974) 15

Hawkins v. United States, 663 A.2d 1221 (D.C. 1995) 13
Illinois v. LaFayette, 462 U.S. 640 (1983) 9
Johnson v. Phelan, 69 F.3d 144 (7th Cir. 1995) . . 11
Kraushaar v. Flanigan, 45 F.3d 1040 (7th Cir. 1995) 11
Mathis v. Appellate Dep't of Superior Court, 105 Cal. Rptr. 126 (1972) 19
Michigan Dep't of State Police v. Sitz, 496 U. S. 444 (1990) . . . . . 8, passim
Morgan v. State, 906 S.W.2d 620 (Tex. App. 1995) 9
Morgan v. Woessner, 997 F.2d 1244 (9th Cir.1993), *cert. dismissed*, 114 S. Ct. 671 (1994) 13
National Treasury Employees' Union v. Van Raab, 489 U.S. 656 (1989) 14, 17
New York v. Burger, 482 U.S. 691 (1987) 17
New York v. Class, 475 U.S. 106 (1986) 9
Osborn v. New York, 385 U.S. 323 (1966) 10
People v. Heimel, 812 P.2d 1177 (Colo. 1991) 16
People v. Hyde, 524 P.2d 830 (Cal. 1974) 16
People v. Turnbeaugh, 451 N.E.2d 1016 (Ill. App. 1983) 16, 19
Pennsylvania v. Mimms, 434 U.S. 106 (1977) . . . 18
Romo v. Champion, 46 F.3d 1013 (10th Cir. 1995) 15, 16, 18
Schmerber v. California, 384 U.S. 757 (1966) 9
Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602 (1989) 8, 14
Spear v. Sowders, 71 F.3d 626 (6th Cir. 1995) (en banc) 15, 18

State v. Garcia, 860 P.2d 217 (N.M. App. 1993) 12
State v. Hughes, 899 S.W.2d 92 (Mo. App. 1994) 13
State v. Manghan, 313 A.2d 225 (N.J. Super. 1973 . . . . . 15, 16
State v. Miller, 520 P.2d 1115 (Ariz. 1974) 16
State v. Moreno, 619 So. 2d 62 (La. 1993) 13
State v. Ohlsen, 537 N.W.2d 794 (Iowa App. 1995) 13
State v. Patterson, 582 A.2d 1204 (Me. 1990), *cert. denied*, 500 U.S. 941 (1991) . 12
State v. Plante, 594 A.2d 165 (N.H.), *cert. denied*, 502 U.S. 984 (1991) 16
Thomas v. Commonwealth, 434 S.E.2d 319 (Va. App. 1993), *rev'd on other grounds*, 444 S.E.2d 275 (Va. App. 1994) (en banc) . . . 13
United States v. Albarado, 495 F.2d 799 (2d Cir. 1974) 15
United States v. Brignoni-Ponce, 422 U.S. 873 (1975) 10
United States v. Bueno, 21 F.3d 120 (6th Cir. 1994) 13
United States v. Davis, 482 F.2d 893 (9th Cir. 1973) 16
United States v. DeAngelo, 584 F.2d 46 (4th Cir. 1978), *cert. denied*, 440 U.S. 935 (1979) 16
United States v. Dixon, 51 F.3d 131 (8th Cir. 1995) 13
United States v. Haynie, 637 F.2d 227 (4th Cir. 1980), *cert. denied*, 451 U.S. 972 (1981) 16

United States v. Herzbrun, 723 F.2d 773 (11th Cir. 1984) 16
United States v. King, 990 F.2d 1552 (10th Cir. 1993) 13
United States v. Martinez-Fuerte, 428 U.S. 543 (1976) 10
United States v. Mathews, 431 F. Supp. 70 (W.D. Okl. 1976) 16
United States v. Montoya De Hernandez, 473 U.S. 531 (1985) 8
United States v. Pierre, 958 F.2d 1304 (5th Cir.) (en banc), *cert. denied*, 506 U.S. 898 (1992) 9, 11
United States v. Place, 462 U.S. 696 (1983) 18
United States v. Pulido-Baquerizo, 800 F.2d 899 (9th Cir. 1986) 16
United States v. Safeels, 982 F.2d 1199 (8th Cir. 1992), *vacated on other grounds*, 114 S. Ct. 41 (1993) 13
United States v. Sharpe, 470 U.S. 675 (1985) 9
United States v. Sokolow, 490 U.S. 1 (1989) 8
United States v. Withers, 972 F.2d 837 (7th Cir. 1992) 13
Vernonia School District 47J v. Acton, 115 S. Ct. 2386 (1995) 8, 14, 17
Wells v. State, 402 So. 2d 402 (Fla. 1981) 17
Williams v. State, 400 So. 2d 988 (Fla. App.), *pet. for rev. denied*, 411 So. 2d 385 (Fla. 1981) 18
Winston v. Lee, 470 U.S. 753 (1985) 9
Wyman v. James, 400 U.S. 309 (1971) 10

Constitutional and Statutory Provisions:

U.S. Const., Amend. IV . . . . . 2, passim
28 U.S.C. § 1257 2
Sup. Ct. R. 13 2

Miscellaneous:

WAYNE R. LAFAVE, SEARCH AND SEIZURE (3d ed. 1996) . . . . . 12, passim
Russell W. Galloway, *Basic Fourth Amendment Analysis*, 32 SANTA CLARA L. REV. 737 (1992) 12
Nadine Strossen, *The Fourth Amendment in the Balance: Accurately Setting the Scales Through the Least Intrusive Alternative Analysis*, 63 N.Y.U. L. REV. 1173 (1988) 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

No.

STATE OF MARYLAND,

Petitioner,

v.

TYRONE JEROME GADSON,

Respondent.

On Petition For Writ of Certiorari
To The Court of Appeals of Maryland

PETITION FOR WRIT OF CERTIORARI

Petitioner, the State of Maryland, respectfully requests that a writ of certiorari issue to review the judgment of the Court of Appeals of Maryland in this case.

OPINIONS BELOW

The reported opinion of the Court of Appeals of Maryland, 341 Md. 1, 668 A.2d 22 (1995), reversing the judgment of the Court of Special Appeals of Maryland, is reproduced in Appendix A. (App. 1a-22a).

The reported opinion of the Court of Special Appeals of Maryland, 102 Md. App. 554, 650 A.2d 1354 (1994),

affirming the denial of the motion to suppress, is reproduced in Appendix B. (App. 23a-42a).

The unreported memorandum opinion of the Circuit Court for Anne Arundel County denying Gadson's motion to suppress is reproduced in Appendix C. (App. 43a-48a).

STATEMENT OF JURISDICTION

The decision of the Court of Appeals of Maryland reversing Gadson's conviction was filed on December 7, 1995. This petition is filed within ninety days of that decision, as required by Rule 13 of the Rules of the Supreme Court. Therefore, jurisdiction of this Court is properly invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment IV provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

On September 13, 1992, at approximately 4:45 p.m., Respondent Tyrone Gadson turned off Maryland Route 175 and drove his truck along the private access road leading to the state correctional institution in Jessup, Maryland. (2a, 34a). Gadson planned to deliver money to a prison inmate. (2a).

Before reaching the prison, Gadson passed two warning signs posted on the access road to alert

prospective visitors of the prison's policy of searching visitors and their vehicles. The first warning sign was about 150 yards from Route 175. That large sign stated in large letters: "WARNING. ALL VISITORS, INCLUDING VEHICLES AND OCCUPANT'S) ARE SUBJECT TO BE SEARCHED UPON ENTERING OR EXITING THE PREMISES." (36a). Gadson drove past a second warning sign on the road shortly thereafter, which stated: "WARNING: DRUG DETECTION DOGS BEING UTILIZED ON INSTITUTIONAL PROPERTY." (36a). After passing these signs, Gadson had the opportunity to turn around and leave but, unlike numerous other visitors, did not do so. (37a).

Gadson finally came to a guard booth approximately 150 yards past the second sign and approximately a quarter mile from the prison. (35a). An additional sign there read: "ALL VEHICLES SUBJECT TO INSPECTION." (36a-37a).

Gadson stopped at the guard booth and advised the guard where he was going. (25a-26a). While Gadson was speaking to the guard, and within 30 seconds of Gadson's arrival, Maryland State Police Trooper Charles Prince approached Gadson and identified himself. Prince had specialized training in K-9 dog handling and was assigned to the prison at Jessup pursuant to the state's drug checkpoint policy.

Prince informed Gadson that Gadson's vehicle was subject to scanning by a trained canine. (3a). Gadson then asked to leave. Pursuant to the checkpoint guidelines, however, Prince detained Gadson to perform the scan. (3a, 8a-9a, 31a, 39a). Gadson turned off his vehicle in response to Prince's order to do so. Within a minute, a certified drug detection dog was led around the outside of the vehicle and alerted to the presence of drugs. (24a-25a, 30a, 41a). Cocaine, marijuana, and drug paraphernalia were recovered in a subsequent search of the vehicle. (2a,

24a).

After his indictment on several drug offenses, Gadson filed a motion to suppress physical evidence. At the hearing on that motion, which was held on May 21, 1993, in the Circuit Court for Anne Arundel County, Maryland, it was established why the checkpoints were set up and the procedures utilized at the checkpoints. Because approximately 70 percent of all inmates at two of Maryland's prisons had been testing positive for narcotics, the governor requested the Maryland State Police to combat the problem by preventing drugs from entering the prisons. (42a). As a result of the governor's directive, the state police established drug detection checkpoints at state correctional facilities, using trained drug detection dogs. (3a, 42a). The checkpoints, however, were not continuously staffed by the K-9 units. (19a).

State guidelines regulating the operation of the checkpoints provide that a K-9 officer approach vehicles that are stopped at the guard house. The K-9 handler informs the driver that the vehicle is to be scanned, meaning that the officer walks around the outside of the vehicle with the dog. To protect the officers, drivers are ordered to turn off their vehicles and to remove the keys from the ignition. Visitors who reach the checkpoint are not given the option to leave. (2a-4a, 26a, 29a-30a, 39a).

In a written opinion filed June 10, 1993, the circuit court denied the motion to suppress. (43a-48a). The court found that the state's interest in preventing the introduction of contraband into the prison justified the intrusion. (47a). The court believed that the intrusion was reasonably related to the state's interest because only those vehicles at the guard booth on the access road were subject to search and those vehicles had passed warning signs. (47a).

Believing that Gadson had had ample opportunity to depart before reaching the guard house, the court rejected Gadson's argument that he should have been allowed to depart when he learned that his vehicle would, in fact, be scanned. To allow Gadson to depart at this juncture, the court reasoned, would constitute a "one-way street for the benefit of the party planning mischief, as there is no guarantee that he would not return later and be more successful." (47a).

On August 10, 1993, Gadson was tried before the circuit court, sitting without a jury. Gadson was found guilty of possession with intent to distribute cocaine and of possession with intent to distribute marijuana. Gadson was sentenced on October 22, 1993, to concurrent prison sentences of five years for each conviction.

The Court of Special Appeals of Maryland affirmed the denial of Gadson's motion to suppress. (23a-42a). In assessing the reasonableness of the intrusion, the court balanced the competing individual and state interests, analogized the situation to checkpoint cases, factored in the notice given to Gadson prior to his reaching the checkpoint and the absence of discretion the K-9 handlers had in determining whom to check, and concluded that the seizure was reasonable. (32a-42a). The court reasoned that subjecting the visitor to the canine sniff advanced society's compelling need to reduce the scourge of drugs in prisons by detecting violations of the law and by deterring others from attempting unlawful smuggling. (40a). As had the circuit court, the intermediate appellate court believed that the state's interest would be frustrated by giving persons the option to depart at the guard booth, because they could return when the dog was not present. (40a-41a).

In a divided opinion dated December 7, 1995, the Court of Appeals of Maryland reversed. (1a-22a). The majority believed that the motorist must be permitted to turn around

rather than submit to the canine sniff because the state's interest in keeping narcotics out of its prisons was accomplished when the person departed. (9a-11a). The court rejected the state's contention that simply turning away visitors who decline to submit to a dog sniff fails to satisfy the government's interest, because the checkpoint is not always staffed with drug detection dogs and the smuggler can simply return when no dog was present. The majority asserted that "the solution to this problem is to continually staff the prison with drug detection dogs." (19a).

Chief Judge Murphy, joined by Judge Rodowsky, dissented. (20a-22a). The dissent rejected the view that the danger of drugs entering the prison ends once a driver manifests an intent to leave. (21a). The dissenting judges saw the majority as giving Gadson the "risk-free opportunity" to determine if a dog was present and to return when no dog was in use. (21a). Believing that the majority "devalue[d] the state's interest by asserting that the state should acquire more drug detection dogs and thereby ensure that all gates to all prisons are covered every day," Chief Judge Murphy said:

> In *every* Fourth Amendment decision, a citizen's privacy interest could have been more fully protected had the state adopted a more expensive alternative. The alternatives available to the state are not before us, however, and we must balance the means actually chosen to protect the state's interest against the privacy interest asserted by the defendant.

(22a). Chief Judge Murphy concluded that the "state's interest in preventing repeated attempts to introduce drugs into its prisons justifies the minimal, temporary detention at issue in this case." (22a).

REASONS FOR GRANTING THE WRIT

Review by this Court of the decision of the Court of Appeals of Maryland is warranted for two reasons. First, based on conflicting language from this Court's opinions, many lower courts persist in believing that a less intrusive means analysis is a component of the Fourth Amendment's reasonableness determination. The result in this case turns on whether such an analysis is a factor in the reasonableness inquiry; this case therefore affords the Court an opportunity to clarify this important aspect of Fourth Amendment law.

Second, this Court has never addressed a search or seizure of a prison visitor and has not identified the governmental and individual interests implicated by such intrusions. As a consequence, the lower courts have differing views regarding the permissibility of the procedure used in this case, which involves detaining prospective visitors for the duration of a canine sniff. With this case, the Court can both identify the competing individual and governmental interests implicated by attempts to prevent contraband from entering prisons and provide a framework for measuring the validity of such procedures.

I.

BASED ON CONFLICTING LANGUAGE IN THIS COURT'S OPINIONS, MANY FEDERAL AND STATE COURTS CONTINUE TO EXAMINE LESS INTRUSIVE ALTERNATIVES AS AN ELEMENT OF REASONABLENESS.

In analyzing the reasonableness of Gadson's detention, the Court of Appeals of Maryland used a less intrusive means analysis. Specifically, the court deemed the procedure unreasonable because Gadson was not permitted to leave. (9a-11a). The majority opined that an alternative method requiring the state "to continually staff the prison with drug detection dogs," should be used to effectuate the state's interest. (19a). Two dissenting judges believed that this Court's opinions foreclose such an analysis and recognized that "we must balance the means actually chosen to protect the state's interest against the privacy interest asserted by the defendant." (22a).

In many cases, this Court has declared that a less intrusive means analysis is not an element of reasonableness: "We have repeatedly refused to declare that only the 'least intrusive' search practicable can be reasonable under the Fourth Amendment." *Vernonia School District 47J v. Acton*, 115 S. Ct. 2386, 2396 (1995). *Accord Michigan Dep't of State Police v. Sitz*, 496 U. S. 444, 453-54 (1990); *United States v. Sokolow*, 490 U.S. 1, 11-12 (1989); *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 629 n.9 (1989); *Colorado v. Bertine*, 479 U.S. 367, 374-75 (1987); *United States v. Montoya De Hernandez*, 473 U.S. 531, 542 (1985);

Illinois v. LaFayette, 462 U.S. 640, 647-48 (1983); *Cady v. Dombrowski*, 413 U.S. 433, 447 (1973).

In many other cases, however, this Court has embraced the view that the examination of less intrusive means is a component of reasonableness. *See New York v. Class*, 475 U.S. 106, 118-19 (1986) (finding that the officer's actions of moving papers on car's dash was "no more intrusive than necessary" to locate VIN and stating that the officer cannot enter the passenger compartment if the VIN is visible from outside the vehicle);[1] *United States v. Sharpe*, 470 U.S. 675, 686-87 (1985) (rejecting unrealistic judicial second guessing as to existence of less intrusive means but stating: "The question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize it or to pursue it."); *Winston v. Lee*, 470 U.S. 753, 760-61 (1985) (discussing surgical intrusions into a person's body for evidence and citing *Schmerber v. California*, 384 U.S. 757 (1966), as an example of a search that was "not more intrusive than reasonably necessary to accomplish its goals"); *Florida v. Royer*, 460 U.S. 491, 501 (1983) (plurality opinion) ("the investigative methods employed should be the least intrusive means reasonably available"); *id.* at 511 n.* (Brennan, J., concurring) (noting that the availability of

---

[1] Some courts read *Class* as mandating a less intrusive means analysis, while others do not. *See, e.g., United States v. Pierre*, 958 F.2d 1304, 1309-10 (5th Cir.) (en banc) (using less intrusive means analysis based on *Class*), *cert. denied*, 506 U.S. 898 (1992); *Morgan v. State*, 906 S.W.2d 620, 623 n.1 (Tex. App. 1995) (*Class* provides clear rule authorizing VIN searches); *id.* at 634 (Dauphinot, J., dissenting) (*Class* requires less intrusive means analysis).

less intrusive means may make an otherwise reasonable intrusion unreasonable but adding, because a lawful stop must be strictly limited, "it is difficult to conceive of a less intrusive means that would be effective to accomplish the purpose of the stop"); *Delaware v. Prouse*, 440 U.S. 648, 659-60 (1979) (rejecting use of spot checks of drivers' licenses and vehicular registrations at the discretion of the officer in the field in part because of the availability of alternative mechanisms); *United States v. Brignoni-Ponce*, 422 U.S. 873, 884-87 (1975) (declining to permit roving patrols by immigration authorities to engage in suspicionless stops and requiring articulable suspicion for stop, the latter allowing "the Government adequate means of guarding the public interest"); *Wyman v. James*, 400 U.S. 309, 318-24 (1971) (receipt of benefits for dependent children permissibly tied to a home visit by governmental authorities because home visit provided information that could not be obtained through interview anywhere else); *Berger v. New York*, 388 U.S. 41, 57-58 (1967) (commenting on limitations placed on wiretap device used in *Osborn v. New York*, 385 U.S. 323 (1966), as involving no greater invasion of privacy "than was necessary under the circumstances"); *Camara v. Municipal Court*, 387 U.S. 523, 537 (1967) (area-wide health and safety code inspections reasonable because other canvassing techniques would not achieve acceptable results).[2]

---

[2] Even in cases seemingly rejecting a less intrusive means analysis, this Court nonetheless has used such an analysis. *See, e.g., Bell v. Wolfish*, 441 U.S. 520, 529 (1979) (noting that less intrusive means analysis is not required but also assuming that it is and concluding that hypothesized alternative was not as effective); *United States v. Martinez-Fuerte*, 428

That many of this Court's cases using a less intrusive means analysis predate other cases rejecting such an analysis has had little effect on the lower courts. Indeed, within the last six years, many lower courts have looked to the availability of less intrusive alternatives in assessing the reasonableness of a search or seizure. *See, e.g., F.E.R. v. Valdez*, 58 F.3d 1530, 1535 (10th Cir. 1995) (inquiring whether state could have achieved its objectives in less intrusive manner and finding that dissemination of patients' records was proper); *Kraushaar v. Flanigan*, 45 F.3d 1040, 1046 (7th Cir. 1995) (using less intrusive means analysis to conclude that a more intrusive search of minor offender was necessary based on facts);[3] *Chapman v. Nichols*, 989 F.2d 393, 396-97 (10th Cir. 1993) (strip search in jail of minor offender unreasonable because of availability of pat-down search); *United States v. Pierre*, 958 F.2d 1304, 1309 (5th Cir.) (en banc) (analyzing agent's actions while interrogating occupants of vehicle stopped at checkpoint to establish that they were "no more

---

U.S. 543, 556-57 & n.12 (1976) (although stating that less restrictive alternative arguments could raise inseparable barriers to the exercise of search and seizure powers, also rejecting the suggested alternative and adding that the traffic-checking program in the interior was "necessary" because the flow of illegal immigrants could not be controlled effectively at the international border).

[3] In two other cases involving prisons, the Seventh Circuit rejected a less intrusive means analysis. *See Johnson v. Phelan*, 69 F.3d 144, 145-46 (7th Cir. 1995) (rejecting less intrusive means analysis in prison context as interfering with management of prison by administrators); *Del Raine v. Williford*, 32 F.3d 1024, 1042 (7th Cir. 1994) (same).

intrusive than necessary"), *cert. denied*, 506 U.S. 898 (1992); *Baughman v. State*, 45 Cal. Rptr. 2d 82, 87 (Cal. App. 1995) (stating rule in invasion of privacy action); *Estes v. Rowland*, 17 Cal. Rptr. 2d 901, 904-05, 909-10, 920 (Cal. App. 1993) (applying less intrusive means analysis to searches of prison visitors); *State v. Patterson*, 582 A.2d 1204, 1205 (Me. 1990) (stating rule in context of vehicle safety roadblocks), *cert. denied*, 500 U.S. 941 (1991); *Barreras v. New Mexico Corrections Dep't*, 838 P.2d 983, 987 (N.M. 1992) (applying less intrusive means analysis to canine searches of correctional officers); *State v. Garcia*, 860 P.2d 217, 219 (N.M. App. 1993) (applying less intrusive means analysis to strip search of prison visitors and finding that permitting visitor to depart from prison was required alternative). *See also Alexander v. City and County of San Francisco*, 29 F.3d 1355, 1368 (9th Cir. 1994) (Kozinski, J., concurring) (employing less intrusive means analysis of using tear gas or waiting out suspect to show that storming of suspect's residence was unreasonable), *cert. denied*, 115 S. Ct. 735 (1995); 4 WAYNE R. LAFAVE, SEARCH AND SEIZURE § 10.7(b) at 658 (3d ed. 1996) (arguing for less intrusive means analysis for screening prison visitors); Russell W. Galloway, *Basic Fourth Amendment Analysis*, 32 SANTA CLARA L. REV. 737, 772 n.214 (1992) (availability of less restrictive alternatives is factor to be considered); Nadine Strossen, *The Fourth Amendment in the Balance: Accurately Setting the Scales Through the Least Intrusive Alternative Analysis*, 63 N.Y.U. L. REV. 1173, 1208-66 (1988) (advocating less intrusive means analysis) .

In one area, the assessment of the reasonableness of an investigative stop, many lower courts routinely cite *Royer* and other of this Court's cases for the necessity of a less

intrusive means analysis. *See United States v. Dixon*, 51 F.3d 131, 132 (8th Cir. 1995); *United States v. Bueno*, 21 F.3d 120, 125 (6th Cir. 1994); *Morgan v. Woessner*, 997 F.2d 1244, 1254 n.5 (9th Cir. 1993), *cert. dismissed*, 114 S. Ct. 671 (1994); *United States v. Safeels*, 982 F.2d 1199, 1205-06 (8th Cir. 1992), *vacated on other grounds*, 114 S. Ct. 41 (1993); *United States v. Withers*, 972 F.2d 837, 843 (7th Cir. 1992); *Hawkins v. United States*, 663 A.2d 1221, 1227-28 (D.C. 1995); *State v. Ohlsen*, 537 N.W.2d 794, 797-98 (Iowa App. 1995); *State v. Moreno*, 619 So. 2d 62, 66 (La. 1993); *State v. Hughes*, 899 S.W.2d 92, 99 (Mo. App. 1994); *Gaines v. State*, 888 S.W.2d 504, 509 (Tex. App. 1994); *Thomas v. Commonwealth*, 434 S.E.2d 319, 323 (Va. App. 1993), *rev'd on other grounds*, 444 S.E.2d 275 (Va. App. 1994) (en banc). *Cf. United States v. King*, 990 F.2d 1552, 1562-63 (10th Cir. 1993) ("While police officers are not required to use the least intrusive means in the course of [an investigative stop], we must determine whether [the officer's] failure to use less intrusive means was unreasonable.").

Relying upon some of these decisions, the Court of Appeals of Maryland used a less intrusive means analysis to support its decision. (11a-14a). The ultimate question is, however, whether the procedure chosen by the state is reasonable—not whether other, less intrusive procedures may achieve the state's interests. The availability of lesser intrusions, such as permitting persons at checkpoints to turn around, should not be part of the judicial assessment of the reasonableness of a search or seizure procedure chosen by politically accountable officials. This case presents the issue squarely and gives this Court the opportunity to guide lower courts in assessing reasonableness in all Fourth Amendment cases.

II.

THIS COURT SHOULD ESTABLISH THE STANDARD OF REASONABLENESS FOR INTRUSIONS DIRECTED AT PRISON VISITORS.

This Court has never addressed a search or seizure of a prison visitor and has not identified the pertinent governmental and individual interests. The lower courts differ regarding what governmental interests are advanced by entrance-way screening techniques: Are such techniques only appropriate to turn away a visitor who declines to submit to the procedure, or may they be used to investigate whether the visitor is carrying contraband? In particular, a conflict exists as to the permissibility of detaining prospective visitors during a canine sniff. With this case, the Court can identify the competing individual and governmental interests when authorities attempt to prevent contraband from entering prisons, and provide a framework for measuring the validity of such procedures.

The permissibility of a law enforcement practice is assessed by balancing the promotion of legitimate governmental interests against the intrusion on the individual's Fourth Amendment interests. *Vernonia School District 47J v. Acton*, 115 S. Ct. at 2390. Searches and seizures often have been upheld when the government's interests involve administrative inspections or special needs. *See, e.g., id.* at 2391; *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602 (1989); *National Treasury Employees' Union v. Van Raab*, 489 U.S. 656, 668-69 (1989). This Court has recognized that the

government has essential and unique interests in the prison environment. *Bell v. Wolfish*, 441 U.S. 520, 558-60 (1979) (discussing searches of pretrial detainees and convicts). Those interests include securing correctional facilities and excluding illegal drugs from those facilities. *See, e.g., Romo v. Champion*, 46 F.3d 1013, 1015 (10th Cir. 1995); *Gettleman v. Werner*, 377 F. Supp. 445, 451 (W.D. Pa. 1974); *Estes v. Rowland*, 17 Cal. Rptr. 2d 901, 908 (Cal. App. 1993); *State v. Manghan*, 313 A.2d 225, 227 (N.J. Super. 1973) .

The procedure at issue here responded to a very serious and immediate problem: 70% of all Maryland inmates test positive for illegal narcotics. The state designed the checkpoint program to combat the influx of drugs onto prison property, but limited resources dictated that the checkpoints not be staffed continuously.

The proliferation of drugs in prisons is not a problem unique to Maryland. Given the national interest in the issue, this Court must decide whether such a procedure is reasonable. In so deciding, the Court likewise can resolve a conflict among the lower courts regarding what government interests may be advanced in all cases involving entrance-way procedures into secured facilities—prisons, airports, courthouses, and the like—and, therefore, what procedures are permissible.

Some courts believe that only specific deterrence may be furthered and the individual must be given the right to leave. *See, e.g., Spear v. Sowders*, 71 F.3d 626, 630-32 (6th. Cir. 1995) (en banc) (concluding that prison visitor must have option to leave before a strip and cavity search may be performed); *United States v. Albarado*, 495 F.2d 799, 807-08 (2d Cir. 1974) (even after activating the magnetometer at an airport, the "prospective passenger

may refuse to submit to a frisk and instead forfeit his ability to travel by air, because this serves the purpose of the whole search procedure, which is not to catch criminals, but rather to keep armed hijackers from getting on airplanes"); *United States v. Davis*, 482 F.2d 893, 908, 910-11 (9th Cir. 1973) (purpose of airport screening is to deter persons from carrying weapons and explosives on board aircraft and screening process must "recognize the right of the person to avoid search by electing not to board the aircraft"); *People v. Hyde*, 524 P.2d 830, 834, 837 (Cal. 1974) (in banc) (airport checkpoints are designed to prevent hijackings and not to ferret out contraband or evidence of criminal activity; individual may elect not to be searched by not boarding plane); *State v. Miller*, 520 P.2d 1115, 1117-18 (Ariz. 1974) (air passenger must be given option to depart rather than submit to search).

Other courts maintain that individuals do not retain the right to leave once they reach the checkpoint. *See, e.g., United States v. Pulido-Baquerizo*, 800 F.2d 899, 902 (9th Cir. 1986) (after briefcase had gone through X-ray machine at airport); *United States v. Herzbrun*, 723 F.2d 773, 776 (11th Cir. 1984) (airport); *United States v. Haynie*, 637 F.2d 227, 230-31 (4th Cir. 1980) (airport), *cert. denied*, 451 U.S. 972, 988 (1981); *United States v. DeAngelo*, 584 F.2d 46, 48 (4th Cir. 1978) (airport), *cert. denied*, 440 U.S. 935 (1979); *United States v. Mathews*, 431 F. Supp. 70, 71-73 (W.D. Okl. 1976) (military base); *People v. Heimel*, 812 P.2d 1177, 1181-82 (Colo. 1991) (airport); *State v. Plante*, 594 A.2d 165, 167 (N.H.) (courthouse), *cert. denied*, 502 U.S. 984 (1991); *People v. Turnbeaugh*, 451 N.E.2d 1016, 1019 (Ill. App. 1983) (canine checkpoint at prison); *State v. Manghan*, 313 A.2d at 228-29 (same). *See also Romo v. Champion*, 46 F.3d

at 1016-20 (dog sniff at roadblock on prison access road permissible; visitor did not ask to leave).

With this case, the Court can determine what governmental interests vis-a-vis prison visitors are permissibly advanced through the use of an administrative checkpoint: mere one time deterrence or an investigation to detect whether the visitor is carrying contraband. *Cf. National Treasury Employees Union v. Van Raab*, 489 U.S. at 668 (can use administrative search to prevent or detect latent or hidden conditions); *New York v. Burger*, 482 U.S. 691, 709 (1987) (inspections do not lose administrative character merely because their ultimate purpose is deterrence of criminal behavior and that, as a result of the inspection, violations of penal statutes are disclosed).

This case also allows the Court to address the intrusion on the visitor's privacy, which is an issue of equal importance in the reasonableness inquiry. The Fourth Amendment protects only those subjective expectations of privacy of an individual that society recognizes as legitimate. *Vernonia School District 47J v. Acton*, 115 S. Ct. at 2391. "What expectations are legitimate varies, of course, with context, depending, for example, upon whether the individual asserting the privacy interest is at home, at work, in a car, or in a public park." *Id. See also Michigan Dep't of State Police v. Sitz*, 496 U.S. at 451-52 (intrusion upon motorist stopped at checkpoint is"minimal").

The lower courts need guidance identifying the strength of a prison visitor's privacy interest. Some courts have opined that, given the nature of the activity—visiting a prison—there is no reasonable expectation that the person would not be searched. *See, e.g., Wells v. State*, 402 So.

2d 402, 404-05 (Fla. 1981) (stating that it "is doubtful that most visitors to a prison have any subjective expectation of privacy that they will not be searched for weapons or other contraband" and holding that any subjective expectation is not one that society is prepared to recognize as reasonable); *Williams v. State*, 400 So. 2d 988, 989 (Fla. App.) (same), *pet. for rev. denied*, 411 So. 2d 385 (Fla. 1981). Other courts have held that the visitor retains some legitimate expectation of privacy. *See, e.g., Spear v. Sowders*, 71 F.3d at 629; *Romo v. Champion*, 46 F.3d at 1018.

This case presents the additional issue whether warnings of an impending search or detention are relevant to the reasonableness analysis. Gadson was properly stopped at the guard house as an incident of his attempt to enter the prison. The only challenged interference with Gadson's privacy was Trooper Prince's prolonging that seizure momentarily to perform the canine scan.[4] This was after Gadson had driven past warnings posted along the private access road informing visitors of the search policy. The lower courts are divided regarding the significance of such

---

[4] Gadson has never challenged the validity of the initial stop at the guard house nor did he assert that the dog sniff was a search. *See United States v. Place*, 462 U.S. 696, 707 (1983) (dog sniff not a search). Gadson also did not contend that the order to turn off his car violated his rights. In any event, the purpose of that order was not to facilitate the dog sniff but to protect the trooper's safety while the dog scanned the car. The law permits such incidental intrusions to protect the safety of an officer to effectuate an otherwise permissible primary intrusion. *See, e.g., Pennsylvania v. Mimms*, 434 U.S. 106, 109 (1977) (per curiam) (as an incident of traffic stop, officer may, for his safety, order driver out of car).

warnings. *See, e.g., Blackburn v. Snow*, 771 F.2d 556, 567 (1st Cir. 1985) (no consent when access to jail conditioned on search); *People v. Turnbeaugh*, 451 N.E.2d at 1020 (signs warning of search at prison bore on reasonableness of search); *Mathis v. Appellate Dep't of Superior Court*, 105 Cal. Rptr. 126, 127 (1972) (a driver passing sign warning that vehicle is subject to search impliedly consents to search); *see generally* 4 WAYNE R. LAFAVE, *supra*, § 10.7(b) at 658-60 (cataloguing views and discussing importance of notice to prison visitor as bearing on reasonableness of intrusion). This case thus presents the opportunity to identify the scope of any legitimate expectation of privacy a prison visitor may have and the effect of notice on that expectation of privacy.

In sum, the authorities are divided regarding the propriety of the procedure used in this case, that is, prolonging the detention of a prison visitor for the limited purpose of conducting a dog sniff of the exterior of that person's vehicle after the visitor has entered prison property. This is an ideal case for this Court to address for the first time the competing governmental and individual interests implicated when the government seeks to prevent visitors traveling by vehicle from bringing contraband into prisons and provide a constitutional framework for measuring the validity of such procedures.

CONCLUSION

For the foregoing reasons, the State of Maryland respectfully requests that this Court issue a writ of certiorari to review the judgment of the Court of Appeals of Maryland.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

GARY E. BAIR*
MARY ELLEN BARBERA
THOMAS K. CLANCY
Assistant Attorneys General

Counsel for Petitioner

**Counsel of Record*

March 4, 1996

APPENDIX

CONTENTS OF APPENDIX

Page

APPENDIX A:

Reported opinion of the Court of Appeals of Maryland, *Tyrone Jerome Gadson v. State of Maryland*, 341 Md. 1, 668 A.2d 22 (1995) 1a

APPENDIX B:

Reported opinion of the Court of Special Appeals of Maryland, *Tyrone Jerome Gadson v. State of Maryland*, 102 Md. App. 554, 650 A.2d 1354 (1994) 23a

APPENDIX C:

Memorandum opinion of the Circuit Court for Anne Arundel County, filed June 10, 1993, *State of Maryland v. Tyrone Jerome Gadson*, Case No. K-92-2885 ..... 43a

APPENDIX A

Court of Appeals of Maryland.

No. 25, Sept. Term, 1995

TYRONE JEROME GADSON

v.

STATE OF MARYLAND

December 7, 1995

Argued before MURPHY, C.J., ELDRIDGE, RODOWSKY, CHASANOW, KARWACKI, RAKER and BELL, JJ.

CHASANOW, Judge.

The question presented in this case is whether the State may constitutionally detain a prospective visitor to a prison long enough to conduct a "canine sniff" of the visitor's motor vehicle after the visitor, upon being told of the procedure, objects and expresses a desire to leave without entering the prison. While it is absolutely proper to require the visitor to submit to such a detention as a condition of entry, we hold that absent reasonable, articulable suspicion of criminal activity, it is unreasonable under the Fourth Amendment of the United States Constitution and Article 26 of the Maryland Declaration of Rights to detain those visitors who, prior to

entering the prison, indicate a preference to leave rather than submit to the detention.

I.

Tryone Jerome Gadson, Petitioner, was convicted in the Circuit Court for Anne Arundel County of possession of cocaine with intent to distribute and possession of marijuana with intent to distribute. The convictions were based on evidence seized during a search of Gadson's truck, including three bags of "crack" cocaine, two bags of marijuana, an electronic scale and other drug paraphernalia. The sole issue on appeal is whether the physical evidence should have been suppressed as the fruit of an illegal seizure.

On September 13, 1992, Gadson and a friend planned to drive to the House of Correction in Jessup to drop off money for an inmate of the facility. Gadson turned off Maryland Route 175 and onto an access road leading to the prison building. The road also gives access to some houses owned by the Division of Correction and some construction trailers. After traveling up the access road approximately 300 yards, Gadson came to a stop at a "guard booth" next to the road. The House of Correction itself is located approximately a quarter of a mile beyond the booth. Although three signs along the access road warned that visitors were subject to search, Gadson testified that he failed to notice them.[1] Shortly after

---

[1] Three signs on the prison access road warn that visitors are subject to search. The first is located approximately 150 yards from the point where the road turns away from Maryland Route 175. It states: "WARNING. ALL VISITORS INCLUDING ALL VEHICLES AND OCCUPANTS ARE SUBJECT TO BEING SEARCHED UPON ENTERING OR

(continued...)

Gadson's truck stopped next to the guard booth, Trooper Charles Prince of the Maryland State Police approached Gadson's truck, identified himself, and informed Gadson that he intended to perform a "canine sniff" of the vehicle using a trained drug detection dog named "Sandy."

Pursuant to State police policy, Trooper Prince ordered Gadson to turn off his vehicle so that he could perform the drug scan. Gadson told Trooper Prince he objected to the canine sniff, and asked for permission to leave the area. The trooper denied Gadson's request. In compliance with the trooper's order, Gadson turned off his truck and waited for the dog to be brought over. The dog "alerted" Trooper Prince that it smelled drugs in the truck, and at that point, Gadson admitted to the trooper that there was marijuana in the truck.[2] Gadson's truck was searched and the contraband seized.

At a suppression hearing before Judge Raymond G. Thieme Jr., Trooper Prince testified that, in 1992 at the governor's request, the Maryland State Police established drug detection "checkpoints" at two state correctional facilities. The purpose of the checkpoints is to prevent transportation of drugs into the prisons. The trooper explained the typical procedure at these checkpoints is for an officer to wait until the visitor's vehicle stops at the guard shack. As the driver explains to the guard his

---

[1](...continued)
EXITING THE PREMISES." A second sign states "WARNING: DRUG DETECTION DOGS BEING UTILIZED ON INSTITUTIONAL PROPERTY," and a final sign, located at the guard booth itself, warns "STOP. ALL VEHICLES SUBJECT TO INSPECTION."

[2] Sandy "alerts" Trooper Prince to the presence of contraband in a vehicle by sitting down and turning his head to the right when he detects the odor of narcotics.

business on the premises, a trooper approaches the vehicle and informs the driver of the required dog sniff. The driver is ordered to turn off the engine and remove the keys from the ignition. The trooper then brings the dog over to the vehicle and the sniff is performed.

Gadson argues that, once informed of the canine sniffing procedure by Trooper Prince, he should have been given the option to turn back rather than submit to further detention and the dog sniff. Judge Thieme ruled against Gadson, and that ruling was affirmed by the Court of Special Appeals. *Gadson v. State*, 102 Md. App. 554, 650 A.2d 1354 (1994). We granted certiorari to consider the important question raised in this case.

II.

The narrow issue before us is whether Trooper Prince's detention of Gadson at the guard shack constituted an "unreasonable seizure" within the meaning of the Fourth Amendment of the United States Constitution and Article 26 of the Maryland Declaration of Rights.[3] Gadson does not contend that the dog sniff itself implicated his Fourth Amendment rights.[4] Nor does Gadson dispute that once

---

[3] Article 26 of the Maryland Declaration of Rights is *in pari materia* with the Fourth Amendment, and decisions of the Supreme Court interpreting the Fourth Amendment are entitled to great respect in construing Article 26. *Little v. State*, 300 Md. 485, 493 n.3, 479 A.2d 903, 907 n.3 (1984).

[4] A dog sniff of a vehicle conducted during a lawful detention is not a "search" within the meaning of the Fourth Amendment. *United States v. Morales-Zamora*, 914 F.2d 200, 203 (10th Cir. 1990); *United States v. Dovali-Avila*, 895 F.2d 206, 207 (5th Cir. 1990). *Accord In re Montrail M.*, 87 Md.

(continued...)

Sandy the dog alerted Trooper Prince to the presence of illegal drugs in the vehicle, sufficient probable cause existed to support a warrantless search of the truck. *See United States v. Dovali-Avila*, 895 F.2d 206, 207 (5th Cir. 1990) (a "dog alert" is sufficient to create probable cause to conduct a warrantless vehicle search); *In re Montrail M.*, 87 Md. App. 420, 437, 589 A.2d 1318, 1327 (1991) (trained drug dog's reaction "properly served as probable cause to search the vehicle" without a warrant), *aff'd*, 325 Md. 527, 601 A.2d 1102 (1992). Nor does Gadson argue that the initial stop at the guard shack was not justified as a way of screening potential visitors to the prison.

Rather, Gadson's theory is that the *detention* he was required to endure in his truck after being ordered to turn off the engine and wait while Trooper Prince retrieved the dog and conducted the drug sniff constituted an unreasonable "seizure" with [sic] the meaning of the Fourth Amendment and Article 26. If Gadson is correct that the seizure was unreasonable, then everything that flowed from it, including the search of Gadson's truck and the contraband that was seized during the search, was tainted and the physical evidence should have been suppressed. *See Ott v. State*, 325 Md. 206, 225, 600 A.2d 111, 120 (noting that physical evidence obtained as the result of an illegal seizure is suppressed under the "fruit of the poisonous tree" doctrine), *cert. denied*, *Maryland v. Ott*, ___ U.S. ___, 113 S.Ct. 295, 121 L.Ed.2d 219 (1992).

---

[4](...continued)
App. 420, 436-37, 589 A.2d 1318, 1326 (1991), *aff'd*, 325 Md. 527, 601 A.2d 1102 (1992). *See also United States v. Place*, 462 U.S. 696, 707, 103 S.Ct. 2637, 2644-45, 77 L.Ed.2d 110, 121 (1983) (dog sniff of luggage does not constitute a "search" under Fourth Amendment).

There is no disputing that Trooper Prince's detaining of Gadson was a "seizure" under the Fourth Amendment. *See Little v. State*, 300 Md. 485, 493, 479 A.2d 903, 907 (1984) ("It is well recognized that stopping an automobile and detaining its occupants constitutes a 'seizure' within the meaning of the Fourth and Fourteenth Amendments to the federal constitution, even though the purpose of the stop is limited and the resulting detention is quite brief.") (citing *Delaware v. Prouse*, 440 U.S. 648, 653, 99 S.Ct. 1391, 1396, 59 L.Ed.2d 660, 667 (1979)). The only issue is the reasonableness of that seizure. *See Little*, 300 Md. at 493, 479 A.2d at 907 (noting that the Fourth Amendment only prohibits seizures that are unreasonable).

III.

As a general rule, the Fourth Amendment prohibits police from detaining an individual, even briefly, absent some "articulable reason" that the person seized is or has been engaged in criminal activity. *Little*, 300 Md. at 494 n.4, 479 A.2d at 907 n.4 (citing *Brown v. Texas*, 443 U.S. 47, 51, 99 S.Ct. 2637, 2640-41, 61 L.Ed.2d 357, 362 (1979)). *See also Florida v. Royer*, 460 U.S. 491, 498, 103 S.Ct. 1319, 1324, 75 L.Ed.2d 229, 236 (1983) (A person "may not be detained even momentarily without reasonable, objective grounds for doing so."); *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 1880, 20 L.Ed.2d 889, 906 (1968) (holding that even limited seizures must be justified by "specific and articulable facts"); *United States v. Torres*, No. 92-5246, slip op. at 6 (4th Cir. Oct. 4, 1995) (noting that investigative detention must be supported by reasonable, articulable suspicion). As Chief Justice Burger explained in *Brown*, when even a limited seizure "is not based on objective criteria, the risk of arbitrary and abusive police practices exceeds tolerable limits." 443 U.S. at 52, 99 S.Ct. at 2641, 61 L.Ed.2d at

363.

Here, the State does not contend that Trooper Prince possessed any articulable suspicion to justify detaining Gadson to conduct the drug sniff. Instead, the State relies on an exception to the general rule that allows police to briefly detain motorists at "checkpoints" even when there is no individualized suspicion of criminal activity. *See Michigan Dept. of State Police v. Sitz*, 496 U.S. 444, 110 S.Ct. 2481, 110 L.Ed.2d 412 (1990) (upholding required stop at sobriety checkpoints); *United States v. Martinez-Fuerte*, 428 U.S. 543, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976) (upholding required stop at checkpoint for illegal immigrants); *Little*, *supra* (upholding sobriety checkpoints). These "checkpoint" cases hold that a limited "seizure" of motorists is permissible even without individualized suspicion where the State's interests in conducting the stop outweigh the motorist's interest in avoiding a relatively minor intrusion of their privacy interests. *See Sitz*, 496 U.S. at 449-55, 110 S.Ct. at 2484-88, 110 L.Ed.2d at 419-23; *Martinez-Fuerte*, 428 U.S. at 561-62, 96 S.Ct. at 3084-85, 49 L.Ed.2d at 1130-31; *Little*, 300 Md. at 504-06, 479 A.2d at 912-14.

In *Little*, this Court upheld the use of "sobriety checkpoints" where motorists were required to stop on a public highway and submit to a very brief police examination for signs of intoxication. We judged the reasonableness of the checkpoints "'by balancing [the] intrusion on the individual's Fourth Amendment interests against [the] promotion of legitimate government interests.'" *Little*, 300 Md. at 494, 479 A.2d at 907 (quoting *Prouse*, 440 U.S. at 654, 99 S.Ct. at 1396, 59 L.Ed.2d at 667-68). Stressing the unintrusive nature of the stops, we found that the burden on the liberties of individual motorists was "minimal" and held, given the "State's compelling interest in detecting and deterring drunk driving," that the checkpoints were reasonable

within the meaning of the Fourth Amendment and Article 26. *Little*, 300 Md. at 506, 479 A.2d at 913. Similarly, in *Sitz*, the Supreme Court found "the balance of the State's interest in preventing drunken driving ... and the degree of intrusion upon individual motorists who are briefly stopped, weighs in favor of the state program." 496 U.S. at 455, 110 S.Ct. at 2488, 110 L.Ed.2d at 423.

In short, the reasonableness of a checkpoint detention is determined by balancing the intrusion of the motorist's privacy interests against the societal need served by the seizure. In the instant case, the State contends that detaining Gadson for the few moments it took to perform the dog sniff was a "minimal intrusion" that was outweighed by the State's "compelling interest" in preventing the flow of illegal narcotics into state prisons. We certainly concur with the State, and with the Court of Special Appeals, that the State has a strong interest in keeping drugs out of its correctional facilities. We hold, however, that because the seizure in this case was not designed to serve that articulated interest, it was unreasonable.

The undisputed testimony from the suppression hearing before Judge Thieme indicated that once Gadson learned of the dog sniff procedure, a quarter mile from the prison building, he hold Trooper Prince that he wanted to leave the area rather than submit. At the hearing, Gadson testified as to what happened after he pulled up to the guard booth:

> "[GADSON]: Then all of a sudden this officer comes over to my truck and tells me your truck is subject to search, something of that nature. And I was like I'm not going in I don't want you searching my truck, you know, I'll just leave. You know I'm just here to leave money and everything. And [Trooper Prince] said no, no ... shut your vehicle off ... [and he went to] get his

dog, Sandy is his name I think.

"[DEFENSE COUNSEL]: Did he detain you at the time?

"[GADSON]: Yeah, he told me to turn my truck off and everything.

Trooper Prince testified:

"[PRINCE]: I advised [Gadson] that I needed him to shut his truck off and the [dog] scan of the vehicle would be done. It was at this time Mr. Gadson stated to me that that was all right that he would leave.... He was advised ... that since he was already on State property that a [dog] scan of the vehicle would be done."

If the purpose of the dog sniff was, as the State contends, to prevent the flow of drugs into the prison, then that purpose was fully served once Gadson agreed to turn around a quarter mile away from the prison building. At that point, the checkpoint had accomplished its stated goal. Gadson intended to turn back without entering the House of Correction. Rather than allowing Gadson to turn around, however, Trooper Prince ordered him to shut off his truck and remain at the guard shack while the canine was brought out to perform the sniff.

There is no doubt that the detention of Gadson by Trooper Prince in this case was aimed at serving a governmental interest. That interest, however, appears to have been the detection and seizure of illegal narcotics generally, rather than, as the State suggests, keeping drugs out of the prison. As already noted, that purpose was accomplished when Gadson asked to leave. The detection and seizure of narcotics generally, although clearly a legitimate governmental interest, is beyond the scope of

the articulated purpose of the prison checkpoint.[5]

We believe there is a fundamental difference between the seizure in the case *sub judice* and those upheld in the police checkpoint cases relied on by the State. In *Little* and *Sitz*, *supra*, the articulated governmental interest was getting drunk drivers off the road. Clearly, if a drunk driver arriving at a sobriety checkpoint were allowed to turn back once arriving at the checkpoint, the State's interest would not be served because the intoxicated motorist would still be a public danger.[6] In *Martinez-Fuerte*, *supra*, the articulated state interest justifying checkpoint stops along public highways was the need to control the flow of illegal immigrants. Allowing vehicles to turn around once arriving at these checkpoints would likewise defeat the stated purpose, because illegal immigrants inside the vehicles would avoid detection and continue to be at large within the United States. On the other hand, the governmental interest asserted in the instant case, keeping illegal narcotics out of the House of Correction, *is accomplished* by turning away motorists

---

[5] We need not decide in this case whether a police checkpoint established for the express purpose of detecting and seizing illegal narcotics from vehicles on a public highway would violate the Fourth Amendment.

[6] In *Little*, we noted that, under the police procedures at issue in that case, motorists were allowed to turn around before reaching the sobriety checkpoints, and that drivers who stopped at the checkpoint but refused to roll down their windows were allowed to proceed. 300 Md. at 506, 479 A.2d at 913-14. Although we stressed that these policies supported our conclusion that the checkpoint stops at issue were minimally intrusive, we did not decide whether checkpoints would be unconstitutional if drivers were not given these options to avoid the investigative purpose of the stop.

who decline to submit to the dog sniffing procedures. Once the motorist decides to turn away from the prison checkpoint, a quarter mile away from the prison, the danger of drugs entering the prison evaporates. *See* 3 WAYNE R. LAFAVE, SEARCH AND SEIZURE § 10.7(b) at 46 (2nd ed. 1987) ("A search without probable cause of a jail visitor is justified only by the need to prevent the introduction of contraband and weapons into the jail, and this is accomplished if the person declines to be searched and departs.").

In essence, the State asks us to expand its authority to detain motorists beyond the time when the stated goal of the detention has already been accomplished. We decline to do so. It is well established that a limited seizure of the kind at issue here may not be extended beyond the point where its purpose has been accomplished *unless* there is reasonable, articulable suspicion of criminal activity to justify further detention. *See United States v. Ramos*, 42 F.3d 1160, 1163 (8th Cir. 1994) (holding that continued detention after traffic stop for seatbelt violation was unreasonable after occupants produced valid drivers licenses and there was no objective reason to raise suspicion of criminal activity), *cert. denied*, ___ U.S. ___, 115 S.Ct. 2015, 131 L.Ed.2d 1013 (1995); *United States v. Walker*, 933 F.2d 812, 816 (10th Cir. 1991) (holding that once police officer had fully investigated the basis for traffic stop, it was unreasonable under the Fourth Amendment to extend the duration of the stop without reasonable suspicion of other criminal activity), *cert. denied*, 502 U.S. 1093, 112 S.Ct. 1168, 117 L.Ed.2d 414 (1992); *United States v. Guzman*, 864 F.2d 1512, 1519-20 (10th Cir. 1988) (same); *Munafo v. State*, 105 Md. App. 662, 673, 660 A.2d 1068, 1073 (1995) (holding that once purpose of initial traffic stop for speeding and reckless driving had been fulfilled, continued detention of driver was unreasonable without articulable suspicion); *Snow v.*

State, 84 Md. App. 243, 264-65, 578 A.2d 816, 826 (1990) (finding that extension of traffic stop detention was not justified without reasonable, articulable suspicion of criminal activity once reason for initial stop had been addressed); *Powell v. State*, 649 So.2d 888, 889 (Fla. App. 1995) ("A continued detention is illegal if the reason for the initial stop is resolved."). *See also Florida v. Royer*, 460 U.S. at 500, 103 S.Ct. at 1325, 75 L.Ed.2d at 238 ("The scope of the detention must be carefully tailored to its underlying justification."). *Cf. United States v. Morales-Zamora*, 914 F.2d 200, 203 (10th Cir. 1990) (upholding a dog sniff of a vehicle as reasonable because it was completed *before* police had accomplished the purpose of the checkpoint stop).

The opinion of the Court of Special Appeals in *Snow*, *supra*, is instructive. In *Snow*, state police stopped a vehicle for speeding on Interstate 95. After issuing Snow a warning for speeding, the officer then developed a "hunch" that there were drugs in the vehicle. Snow refused a request to search the vehicle. Nonetheless, the trooper detained Snow and a passenger long enough to conduct a drug scan of the vehicle using a trained police dog. The intermediate appellate court first held there was a "seizure" within the meaning of the Fourth Amendment when Snow was ordered to remain by the side of the road while the trooper conducted the dog sniff. *Snow*, 84 Md. App. at 259, 578 A.2d at 824. The court then found that the seizure was unreasonable because:

> "The intrusion permitted 'must be temporary and last no longer than is necessary to effectuate the purpose of the stop.' *Florida v. Royer*, 460 U.S. 491, 500, 103 S.Ct. 1319, 1325, 75 L.Ed.2d 229[, 238] (1983). Here, the purpose of the stop was to warn or issue a ticket to Snow for speeding. That purpose was fully fulfilled, but the detention was continued. ... Although it is true

> that the duration of a stop is a factor in calculating whether an intrusion is within constitutional limitations ... the State must first demonstrate a reasonable, articulable suspicion that a crime is being or is about to be committed. The State, as we have stated above, did not adequately demonstrate a reasonable, articulable suspicion." (Citation omitted).

Snow, 84 Md. App. at 264-65, 578 A.2d at 826. Therefore, prolonging the detention was unreasonable. In sum, the court held that because police had already fulfilled the purpose of the initial stop when the officer issued a warning for speeding, and because the officer did not possess reasonable, articulable suspicion that Snow had drugs in his vehicle, there was no justification for further detention to conduct the dog sniff.

Similarly, in *Munafo*, *supra*, the defendant was stopped for speeding and reckless driving. He produced a valid license and registration. Rather than ending the stop promptly and sending the defendant on his way, police officers detained him for a few minutes to investigate a "hunch" that he was in possession of narcotics. The Court of Special Appeals ruled that once the purpose of an initial traffic stop has been satisfied, "continued detention of a vehicle and its occupant(s) constitutes a second stop, and must be independently justified by reasonable suspicion." *Munafo*, 105 Md. App. at 670, 660 A.2d at 1072. Since there was no sufficient basis for such suspicion, the court held that contraband seized from Munafo's vehicle should have been suppressed. 105 Md. App. at 676, 660 A.2d at 1075.

We believe this reasoning applies here. Trooper Prince testified, and the State concedes, that the purpose of detaining Gadson at the guard shack was to prevent drugs from entering the House of Correction. Once Gadson agreed to turn back a quarter mile from the prison, that

goal was fulfilled. Continued detention of Gadson would have been justified only if Trooper Prince had "reasonable, articulable suspicion" that there were drugs in Gadson's truck. The State does not contend that Trooper Prince possessed any basis for such suspicion, and none appears on the record.[7] Therefore, we hold the detention was unreasonable.

IV.

Although the State places great emphasis on the police checkpoint cases discussed in Part III, *supra*, we believe this case is also closely analogous to those cases involving searches and seizures required as a condition of entry into

---

[7] Trooper Prince testified that he suspected that there were drugs in the vehicle once Gadson indicated he did not want the dog sniff to proceed. When asked why he refused to allow Gadson to turn around and leave, the officer testified:

> "There were several reasons. If I was to let him go by the time I made my initial contact with Mr. Gadson two other vehicles had pulled up behind us, so therefore he couldn't back up. If he went forward he would be further into the D[ivision] of Correction [] property. His comment to me that, that's okay, I'll leave, brought to my suspicions that there was something in the vehicle that he did not want the dog to find. At that time I felt that there were narcotics in the vehicle. And I did not let him leave."

It is settled that a person's refusal to consent to a search or dog sniff may not be considered in determining whether the police had reasonable, articulable suspicion of criminal activity to justify continued detention. *See United States v. Torres*, No. 92-5246, slip op. at 9 (4th Cir. Oct. 4, 1995); *Snow v. State*, 84 Md. App. 243, 260, 578 A.2d 816, 825 (1990).

secure areas, such as prisons, military installations, or commercial aircraft. In those cases, courts have held that the government may require individuals to submit to a search or seizure prior to entry, but the individual retains the right to decline entry rather than submit. *See United States v. Davis*, 482 F.2d 893, 910-11 (9th Cir. 1973) (noting that airport screening searches are reasonable only if passengers are given the option of leaving rather than submitting); *United States v. Miles*, 480 F.2d 1217, 1219 (9th Cir.) (per curium) (noting that searches required as a condition of entrance to a secure area of a military base are reasonable as long as individuals are given the option of avoiding the search by electing not to seek entry), *cert. denied*, 414 U.S. 1008, 94 S.Ct. 369, 38 L.Ed.2d 245 (1973); *Jordon v. Wolke*, 450 F. Supp. 213 (E.D. Wis. 1978) (noting that rule governing searches required of prison visitors "should also provide that visitors will be informed that they may refuse to be searched but will thereby forfeit the opportunity to visit each time they so refuse"); *Commonwealth v. Dugger*, 486 A.2d 382, 384 (Pa. 1985) ("A visitor comes to a prison voluntarily. If he or she refuses to be searched they may leave."); LAFAVE, *supra*, § 10.7(b) at 46 (Suspicionless search procedures at prison gates that are "reasonable under the Fourth Amendment as means of *preventing* certain conduct should not be extended to situations in which only detection rather than prevention is accomplished."). *Contra United States v. Skipwith*, 482 F.2d 1272 (5th Cir. 1973); *People v. Turnbeaugh*, 451 N.E.2d 1016 (Ill. App. 1983).

In *Davis*, *supra*, the Ninth Circuit considered the constitutionality of an airport search of a passenger's briefcase prior to boarding. The court found that pre-boarding screening of all passengers and carry-on luggage was reasonable under the Fourth Amendment as a way of preventing the smuggling of weapons or explosives onto

aircraft. *Davis*, 482 F.2d at 910. The court stressed, however, that such "airport screening searches are valid *only if they recognize the right of a person to avoid search by electing not to board the aircraft.*" *Davis*, 482 F.2d at 910-11 (emphasis added) (footnote omitted). The court went on to explain:

> "It is difficult to see how the need to prevent weapons and explosives from being carried aboard the plane could justify the search of a person who had elected not to board. Perhaps it could be argued that a compelled search might lead to the apprehension of a potential hijacker, eliminating or at least reducing the chance that he would try again. Compared to the degree of additional intrusiveness that compulsory searches involve, however, this possibility seems so slight as to be inconsequential. The risk of successful hijacking is not enhanced by allowing a potential passenger to avoid a search on a particular occasion by electing not to fly.
>
> * * * * * *
>
> "Since a compelled search of persons who elect not to board would not contribute to barring weapons and explosives from the plane, it would serve only the purpose of apprehending violators of either the criminal prohibition against attempting to board an aircraft while carrying a concealed weapon, ... or some other criminal statute....
>
> In sum, airport screening searches of the persons and immediate possessions of potential passengers for weapons and explosives are reasonable under the Fourth Amendment *provided each prospective boarder retains the right to leave rather than submit to the search.*" (Emphasis added).

Davis, 482 F.2d at 911-12. Although *Davis* addressed the question of whether a warrantless airport *search* of a prospective passenger was reasonable, we believe the reasoning applies with equal force in the instant case, where a limited *seizure* is at issue.

More recent cases have upheld the constitutionality of x-ray screening at airports based on the theory of implied consent. In *United States v. DeAngelo*, 584 F.2d 46 (4th Cir. 1978), *cert. denied*, 440 U.S. 935, 99 S.Ct. 1278, 59 L.Ed.2d 493 (1979), for example, the Fourth Circuit held that once a passenger voluntarily submitted his briefcase for x-ray examination, he no longer retained the option of avoiding further inspection of the case by electing not to board the flight.[8] *Accord United States v. Pulido-Baqerizo*, 800 F.2d 899 (9th Cir. 1986); *United States v. Henry*, 615 F.2d 1223 (9th Cir. 1980).

The key to these cases, however, was the fact that the passengers consented to the use of the x-ray scanning of their luggage by voluntarily surrendering it for x-ray examination. Accordingly, they are far different from the case *sub judice*, where Gadson never agreed to be detained

---

[8] In addition to upholding the search on the basis of implied consent, the Fourth Circuit in *United States v. DeAngelo*, 584 F. 2d 46 (4th Cir. 1978), also held that the search was justified as a means of avoiding an "immediate danger" to people in the airport. 584 F.2d at 47. During an initial x-ray scan of DeAngelo's briefcase, a large portion of the case appeared black on the x-ray screen. Thus, the court held that it was reasonable for security officers to conclude that DeAngelo may have been carrying explosives or a gun, either of which could have posed a danger to security officers and bystanders. *Id.* Therefore, the officers were justified in opening the case as a means of preventing a possible threat to security officers and bystanders. *Id.* No such public safety concerns were present in the instant case.

for the dog sniff. Upon arriving at the guard shack and being told of the procedure, Gadson expressed a desire to leave rather than enter the House of Correction. Hence, there was no consent, express or implied.[9]

In the final analysis, the pivotal question here is at what moment did Gadson reach the "point of no return;" that crucial instant when, like an airline passenger surrendering his bag for an airport x-ray scan, he consented to governmental intrusion into his privacy interests. The State would have us hold that, once Gadson reached the guard booth on the prison access road, a full quarter mile from the House of Correction, he had reached the point where he could no longer withdraw. We disagree. In our view, Gadson retained the right to turn around and leave until the point Trooper Prince informed him of the dog sniffing procedures. Upon learning that the dog sniff was required, Gadson, like the airline passenger who walks up to the airport gate and sees that he must submit his bags for an x-ray scan, retained the right to depart from the guard booth unfettered rather than submit.

In holding that Gadson had no right to turn back from the guard booth, the Court of Special Appeals relied on *Turnbeaugh, supra*, in which the intermediate appellate court of Illinois held that a motorist who was stopped on

---

[9] The State places great emphasis on the three signs posted along the road leading up to House of Correction, warning that visitors were subject to search. Although the presence of the signs may bear on the overall reasonableness of the Fourth Amendment intrusion at issue here, we doubt their presence is sufficient to support a conclusion that Gadson consented, impliedly or otherwise, to be detained by the time he reached the guard shack. *See State v. Salit*, 613 P.2d 245, 253-54 (Alaska 1980) (holding that presence of signs warning that luggage would be searched at airport was insufficient to support warrantless search on the basis of implied consent).

a prison access road did not have the right to avoid a search of his vehicle by leaving the area. 451 N.E.2d at 1019. The Illinois court ruled "[a]n option to depart rather than be searched would constitute a one-way street for the benefit of the party planning mischief, as there is no guarantee that he would not return later and be more successful." *Id.* We find this to be an inadequate justification for the detention. The risk that a drug smuggler might return after having been turned back from the prison guard booth and escape detection the second time is small, and we do not believe it justifies the additional intrusiveness of compulsory seizures of nonvisitors who have driven up to a checkpoint a full quarter mile from the prison itself.[10] *See* LAFAVE, *supra*, at 46.

V.

The articulated purpose of the detention at issue in this case was to prevent illegal drugs from entering the House of Correction. Once Gadson agreed to turn back from the guard booth, that purpose was wholly accomplished. Therefore, further detention could only be justified if Trooper Prince possessed reasonable, articulable suspicion that Gadson had engaged in criminal activity. Because

---

[10] The State also argues that simply turning away visitors who decline to submit to the dog sniff is insufficient because the checkpoint is not always staffed with drug detection dogs. Therefore, a drug smuggler could simply drive up to the gate repeatedly, turning away each time a dog was being used, until he arrived at a time when no dog was present. We believe the solution to this problem is to continually staff the prison with drug detection dogs, not to authorize the suspicionless detention of motorists and passengers who indicate a preference to leave without entering the prison.

there was no proper basis for such suspicion, the detention of Gadson was unreasonable under the Fourth Amendment and Article 26. Accordingly, the evidence discovered pursuant to that detention should have been suppressed. Therefore, we reverse.

JUDGMENT OF THE COURT OF SPECIAL APPEALS REVERSED. CASE REMANDED TO THAT COURT WITH INSTRUCTIONS TO REMAND THIS CASE TO THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY ANNE ARUNDEL COUNTY.

Dissenting opinion by MURPHY, C.J., in which RODOWSKY, J., joins.

MURPHY, Chief Judge, dissenting.

In my view, the state's interest in preventing contraband from entering prison facilities justifies the minimal intrusion at issue here. I, therefore, respectfully dissent.

As the majority correctly notes, this Court and the Supreme Court have found limited detentions of motorists to be permissible under the Fourth Amendment. *See Michigan Dept. of State Police v. Sitz*, 496 U.S. 444, 110 S. Ct. 2481, 110 L. Ed. 2d 412 (1990); *Little v. State*, 300 Md. 485, 479 A.2d 903 (1984). In such cases, no particularized suspicion of wrongdoing is required when the officer conducting the detention is governed by appropriately drawn regulations and the state's interest in conducting the detention outweighs the motorist's privacy interest. *See Sitz, supra*, 496 U.S. at 449-55. I disagree with the majority's conclusion that the second of these requirements is not met.

The privacy interests in this case are far more attenuated

than even the minimal interests at issue in *Sitz*. In addition to their short duration, the detentions at issue here involve a very narrowly defined class of individuals. In *Sitz*, the Supreme Court upheld the use of drunk-driving checkpoints where every driver traveling on a public highway was stopped and subjected to a temporary seizure. *Id.* In contrast, the temporary detention at issue in this case is limited to persons who drive 300 hundred [sic] yards up a private prison access road to a guard house, intending to enter the prison grounds and having been warned by three separate signs posted on the access road that they will be subject to search and that drug dogs may be used for this purpose. Members of this limited subset of the driving population are then detained for approximately one minute while a drug sniffing dog walks around the outside of their car.

The majority asserts that the state has no interest sufficient to counterbalance this minimal intrusion. The majority distinguishes *Sitz* by asserting that "if a drunk driver arriving at a sobriety checkpoint were allowed to turn back once arriving at the checkpoint, the State's interest would not be served because the intoxicated motorist would still be a public danger." In contrast, the majority assumes that the danger of drugs entering the prison ends once a driver manifests an intent to leave the prison property.

I disagree with this conclusion. Because the drug-detecting dogs are not always present at every gate on every day, an individual attempting to introduce contraband into a prison facility will only be subject to detection some of the time. Under the majority's holding, Gadson now has a risk-free opportunity to determine whether drug dogs are in use on any particular day. Gadson can approach the gate house, "change his mind" about visiting the prison when he learns that a dog

is in use and return another day. When no dog is in use, Gadson can proceed onto the prison grounds without fear.

The question before us is whether the state's interest in preventing this sort of repeated attempt to introduce drugs into its prison facilities justifies the minimal, temporary detention of those who approach the guard house and change their mind about entering the prison once they learn that a drug dog is in use. The majority devalues the state's interest by asserting that the state should acquire more drug detection dogs and thereby ensure that all gates to all prisons are covered on every day. In *every* Fourth Amendment decision, a citizen's privacy interest could have been more fully protected had the state adopted a more expensive alternative. *See Skinner v. Railway Labor Exec. Ass'n*, 489 U.S. 602, 629 n.9, 103 L. Ed. 2d 639, 109 S. Ct. 1402 (1989) (stating that "judges engaged in post hoc evaluations of government conduct 'can almost always imagine some alternative means by which the objectives of the [government] might have been accomplished'") (quoting *United States v. Montoya de Hernandez*, 473 U.S. 531, 542, 87 L. Ed. 2d 381, 105 S. Ct. 3304 (1985)). The alternatives available to the state are not before us, however, and we must balance the means actually chosen to protect the state's interest against the privacy interest asserted by the defendant. I believe that the state's interest in preventing repeated attempts to introduce drugs into its prisons justifies the minimal, temporary detention at issue in this case.

For the reasons stated, I would affirm the judgment of the Court of Special Appeals.

Judge RODOWSKY has authorized me to state that he concurs with the views expressed herein.

APPENDIX B

TYRONE JEROME GADSON

v.

STATE of Maryland

No. 1729, Sept. Term, 1993.

Court of Special Appeals of Maryland.

Dec. 28, 1994.

Argued before MOYLAN and FISCHER, JJ., and MARVIN H. SMITH, Judge of the Court of Appeals (Retired), Specially Assigned.

MOYLAN, Judge.

The appellant, Tyrone Jerome Gadson, was convicted in the Circuit Court for Anne Arundel County by Judge Raymond G. Thieme, Jr., sitting without a jury, of possession of cocaine with intent to distribute and of possession of marijuana with intent to distribute. On this appeal, he raises the single contention that, at the pretrial suppression hearing, Judge Thieme erroneously failed to exclude the physical evidence seized from him by the police.

The merits of the conviction are not in dispute. The case was submitted to Judge Thieme on an agreed statement of facts. On September 12, 1992, the appellant drove a truck to the guard shack in front of the Maryland

House of Correction in Jessup. Maryland State Police Trooper Charles Prince searched the truck and recovered from the glove compartment three bags of crack cocaine and two bags of marijuana. Also recovered from under the driver's seat and floor mat were cigarette rolling papers. There was also found in the truck an electronic scale. The appellant freely admitted to Trooper Prince that the drugs were his and that he sold them to pay his bills because he did not have a job. The only issue on this appeal is the Fourth Amendment reasonableness of the search of the truck that produced that evidence.

By a process of elimination, we can isolate the single narrow issue before us. To do that, it behooves us to work backward from the ultimate search to the antecedent actions that preceded that search.

A Non-Issue:

The Ultimate Search of the Truck

There can be no disputing that the ultimate search of the cab of the truck and its glove compartment for narcotics was a legitimate warrantless search under the *Carroll* Doctrine. *Carroll v. United States*, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1925); *Chambers v. Maroney*, 399 U.S. 42, 90 S.Ct. 1975, 26 L.Ed.2d 419 (1970). A good warrantless search under the *Carroll* Doctrine or so-called "automobile exception" requires, of course, the combination of exigency plus probable cause. The ready mobility of the appellant's truck satisfied the exigency requirement. *California v. Carney*, 471 U.S. 386, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985).

The probable cause to believe that the truck contained contraband narcotics was supplied by "Sandy," a member of the Maryland State Police K-9 corps, who had been

licensed as a certified drug detection dog and who worked regularly with Trooper Prince. As Sandy stood outside the appellant's truck, with its doors closed, he "alerted" to the presence of narcotics. That the "alert" to the presence of narcotics by a trained and certified drug-sniffing canine is ample to establish probable cause is well established law. *Snow v. State*, 84 Md.App. 243, 247-248, 578 A.2d 816 (1990); *In re Montrail M.*, 87 Md.App. 420, 435-437, 589 A.2d 1318 (1991), *aff'd*, 325 Md. 527, 601 A.2d 1102 (1992); *Grant v. State*, 55 Md.App. 1, 14-15, 461 A.2d 524 (1983), *cert. dismissed*, 299 Md. 309, 473 A.2d 455 (1984). *See also Florida v. Royer*, 460 U.S. 491, 505-506, 103 S.Ct. 1319, 1328-1329, 75 L.Ed.2d 229, 241-242 (1983).

Looking forward from the moment when Sandy, by "alerting," communicated his belief to Trooper Prince that narcotics were in the truck, the Fourth Amendment was not offended by the ensuing warrantless *Carroll* Doctrine search of the truck for those narcotics.

Another Non-Issue:

The Antecedent Sniffing of the Truck

The question remains, however, of whether, looking backward, the Fourth Amendment was offended by Sandy's sniffing of the truck. Whether the Fourth Amendment was even involved, so as to require satisfaction, at that particular stage of the total investigative episode depends upon whether a sniff or smell by a drug detection dog constitutes a "search" within the contemplation of the Fourth Amendment. It does not.

Trooper Prince described what he and his colleagues refer to as the "drug checkpoint." He explained that

after vehicles have entered the property of the Department of Corrections and are approaching the House of Correction itself, they have to come to a stop at a guardhouse. The driver is questioned by the guard on duty and advises him as to which facility the driver wishes to visit. Trooper Prince then described the *modus operandi* of the attendant scan of the vehicle by a drug sniffing canine.

> While they're at that guard house, at this time, either a Maryland State Police K-9 or Department of Corrections, Narcotics K-9, will go up and scan the vehicles. *When I say scan the vehicles I mean just walk the dog on the outside of the vehicle.* (emphasis supplied).

The elementary physics of the olfactory sense, at least in circumstances such as these, is that the dog's nose never intrudes into a constitutionally protected area, such as the appellant's truck. It is rather the case that the dog's nose remains outside, where the dog's nose has a constitutionally unassailable right to be, and that the suspicious and incriminating vapors come wafting out across the public air to meet the dog's nose on the dog's nose's turf. We see no doctrinal difference, be the investigator man or beast, between standing outside and smelling aromas emanating from a truck, on the one hand, and standing outside and hearing sounds resonating from a truck, on the other. In each case, the sensory receptor remains outside where it has a right to be and the stimuli come out to meet it there.

If Trooper Prince, while standing outside, had himself detected a suspicious smell escaping from the truck, no one could dispute his entitlement to factor that sensory data into his accumulation of probable cause. *Taylor v. United States*, 286 U.S. 1, 52 S.Ct. 466, 76 L.Ed. 951 (1932); *Johnson v. United States*, 333 U.S. 10, 68 S.Ct.

367, 92 L.Ed. 436 (1948). That the Maryland State Police chose to rely on Sandy's nose rather than on Trooper Prince's nose was a tactical decision without constitutional significance; it was nothing more than the most efficient deployment of the respective investigative talents of available personnel.

Utilizing an alternative framework of analysis, the Supreme Court in *United States v. Place*, 462 U.S. 696, 707, 103 S.Ct. 2637, 2644-2645, 77 L.Ed.2d 110, 121 (1983), agreed that a "canine sniff" of a piece of luggage (or of a vehicle or of a school locker, etc.) made from outside the repository does not constitute a "search" of the repository within the contemplation of the Fourth Amendment:

> A "canine sniff" by a well-trained narcotics detection dog, however, does not require opening the luggage. It does not expose noncontraband items that otherwise would remain hidden from public view, as does, for example, an officer's rummaging through the contents of the luggage. Thus, the manner in which information is obtained through this investigative technique is much less intrusive than a typical search. Moreover, the sniff discloses only the presence or absence of narcotics, a contraband item. Thus, despite the fact that the sniff tells the authorities something about the contents of the luggage, the information obtained is limited. This limited disclosure also ensures that the owner of the property is not subjected to the embarrassment and inconvenience entailed unless discriminate and more intrusive investigative methods.

The Supreme Court was dealing in that instance with a piece of luggage. The analysis of Justice O'Connor would apply with equal validity to any repository of

possible evidence:

> [T]he canine sniff is *sui generis*. We are aware of no other investigative procedure that is so limited both in the manner in which the information is obtained and in the content of the information revealed by the procedure. Therefore, we conclude that the particular course of investigation that the agents intended to pursue here—exposure of respondent's luggage, which was located in a public place, to a trained canine—did not constitute a "search" within the meaning of the Fourth Amendment.

462 U.S. at 707, 103 S. Ct. at 2644-2645. *And see In re Montrail M.*, 87 Md. App. 420, 435, 589 A.2d 1318 (1991), *aff'd*, 325 Md. 527, 601 A.2d 1102 (1992).

Looking forward from the instant when Sandy stood close by but still scrupulously outside the truck and prepared to inhale his first whiff, the Fourth Amendment could not conceivably have been offended by the immediately ensuing sniff or sniffs for the reason that the Fourth Amendment does not guard against sniffing, reasonable or unreasonable, and was not, therefore, in any way involved.

A Possible Issue:

The Detention That Preceded or Attended the Sniff

The question remains, however, of whether, looking backward, the Fourth Amendment was offended by Trooper Prince's ordering of the appellant to turn off the ignition and to leave the truck in place for the few moments, described as less than a minute, that it took to bring Sandy onto the field. Everything hinges upon the reasonableness of that brief detention—if the detention

was material.

It is only by the narrowest of margins that the detention itself is, indeed, material in a Fourth Amendment sense. Before examining the reasonableness of the detention, it is necessary to determine whether it represented an actual causative link in the investigative chain or whether it was merely a coincidental measure, attendant upon the investigation to be sure but not critical to it. We gather from the testimony that, generally speaking, the drug sniffing dog and its handler are routinely present in the immediate vicinity of the guardhouse as each arriving motorist stops to respond to the questioning of the guard. In such a case, the olfactory scan by the dog would be essentially simultaneous with the conversational exchange between the motorist and the guard. Any further detention beyond pausing at the guard shack would not be indispensable in order for the dog and its trainer to carry out their scanning mission. Even a vehicle moving from a dead stop into forward gear or reverse would remain vulnerable to the sniffing process and its possibly incriminating results for the time necessary for a canine smell.

Indeed, the stated purpose of the police in ordering the motorist to turn off the ignition and to keep the vehicle immobile for the brief period of canine inspection is not to enable the dog and handler to carry out the inspection *per se* but rather to enable them to do so in a way that more adequately guarantees the safety of dog and handler:

> When we do this we have the person turn the vehicle off, take, usually take the keys out of the ignition, *that prevents the people from trying to run us over. There have been times* at the Correctional Institute *where people tried to run us over when we*

were trying to perform these scans. (emphasis supplied).

If the sniffing of the appellant's truck by Sandy were going to be carried out in any event, regardless of whether the truck was at rest or was shifting into gear and beginning to move, the detention, reasonable or unreasonable, would have no bearing on the ultimate suppression issue. Trooper Prince would have had the benefit of Sandy's olfactory sensations, whether that data was gathered safely or perilously. If the only purpose of the detention was to ensure that neither Trooper Prince nor Sandy would be hit or run over by the appellant's truck, the detention would not have been the source of the incriminating data and would have been a merely coincidental safety measure. *Cf. Pennsylvania v. Mimms*, 434 U.S. 106, 109-111, 98 S.Ct. 330, 332-334, 54 L.Ed.2d 331, 336-337 (1977). It is a simple matter of cause and effect. If the immobilization of the appellant's truck made the scan possible, the reasonableness of that immobilization would be material to the suppression issue. If the immobilization did nothing more than guarantee that Sandy, while sniffing, would not go in harm's way, it would be immaterial to the suppression.

In this particular case, the testimony lends itself to the interpretation that Sandy was not immediately present at the guardhouse when the appellant's truck came to a stop but had to be brought to the scene from a short distance away, albeit within a fraction of a minute. Since warrantless Fourth Amendment intrusions are presumptively unreasonable and the burden is on the State to rebut that presumption, any doubt in this regard must be resolved in the appellant's favor. We will, therefore, treat the brief detention as having been a necessary predicate for the olfactory scan and will

examine its reasonableness under the Fourth Amendment.

Yet Another Non-Issue:

Consent, Express or Implied

It is that the appellant did not consent to that detention. Consent is in no way a factor in this case. After the initial brief exchange between the appellant and the guard at the guard shack, Trooper Prince approached the appellant and directed him to turn off the ignition because Sandy was about to walk around the truck and smell it. The appellant demurred, expressing his unequivocal desire to turn around and drive away from the prison rather than to submit the vehicle to the sniffing. The appellant, however, no longer had any option. He was ordered to turn off the ignition and remain in place. He complied. Self-evidently, there was no express consent.

Neither is this a case in which the appellant's acquiescence to the police order could be deemed implied consent. Had the appellant gone on to proceed deeper into the prison compound and had he, for that purpose, complied with the necessary condition precedent of subjecting his truck to the dog sniff, that might be analyzed as an instance of implied consent even if no words of consent were spoken. Implied consent, moreover, is frequently relied upon as the rationale for airport searches, where proceeding through the metal detectors is a precondition for boarding the plane or even for proceeding to the departure gate. In cases of implied consent, however, the person whose consent is requested, either expressly or by the circumstances, retains the option to consent to the search or to forego

entry into the prison, onto the plane, etc., thereby avoiding the search. It is an inherent characteristic of consent that it can be denied at any time or, having been given, can be revoked at any time.

The brief immobilization of the appellant's truck in this case was in direct obedience to an express order from Trooper Prince. Our Fourth Amendment examination will proceed in that context.

The Narrow Issue:

Ordering the Appellant Not to Drive Away

This, in the last analysis, is a "checkpoint" case. We are not dealing with a brief detention of the appellant at a random time or in a random place. We are dealing, rather, with the reasonableness of a required brief stop at a checkpoint. That a required stop at a checkpoint is a significant enough interference with an individual's freedom of movement to engage the gears of the Fourth Amendment was made very clear by the Supreme Court in *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444, 450, 110 S.Ct. 2481, 2485, 110 L.Ed.2d 412, 420 (1990), where Chief Justice Rehnquist observed:

> Petitioners concede, correctly in our view, that a Fourth Amendment "seizure" occurs when a vehicle is stopped at a checkpoint. The question thus becomes whether such seizures are "reasonable" under the Fourth Amendment. (citations omitted).

In *Little v. State*, 300 Md. 485, 493-494, 479 A.2d 903 (1984), the Court of Appeals spoke to the same effect. Chief Judge Murphy there observed:

> It is well recognized that stopping an automobile and detaining its occupants constitutes a "seizure" within the meaning of the Fourth and Fourteenth

> Amendments to the federal constitution, even though the purpose of the stop is limited and the resulting detention is quite brief. The Fourth Amendment, however, does not prohibit all seizures but only those which are unreasonable. In other words, as the Supreme Court made clear both in *Prouse* and *Martinez-Fuerte*, such seizures are not per se violative of the Fourth Amendment simply because the stop was not based on either probable cause to believe or reasonable suspicion that the motorist was engaged in conduct in violation of the criminal law. As *Prouse* states, the essential purpose of the Fourth Amendment is to impose a standard of reasonableness upon the exercise of discretion by governmental officers in order to safeguard the privacy and security of individuals against arbitrary invasions. Hence, "the permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests." (citations omitted).

See also Brown v. State, 78 Md.App. 513, 553 A.2d 1317 (1989).

Although both *Michigan Dept. of State Police v. Sitz* and *Little v. State* were cases involving sobriety checkpoints, the Supreme Court in *United States v. Martinez-Fuerte*, 428 U.S. 543, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976), upheld the reasonableness of fixed checkpoints near the Mexican border to deter and to inhibit illegal entry into the country. In *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979), moreover, it set out the circumstances under which checkpoints would be reasonable to further the interest of traffic safety by stopping motorists in order to

inspect their operator permits and vehicle registration documents.

The common denominator of all of the checkpoint cases is that the reasonableness of the brief detention of the motorist must be measured against the societal need being served. In *Little v. State*, 300 Md. at 501, 479 A.2d 903, the Court of Appeals discussed some of the factors to be considered in the assessment of reasonableness:

> A majority of courts, however, have sustained the use of roadblocks as a proper law enforcement tool. As a general rule, the constitutionality of traffic checkpoints has been upheld where: (1) the discretion of the officers in the field is carefully circumscribed by clear objective regulations established by high level administrative officials; (2) approaching drivers are given adequate warning that there is a roadblock ahead; (3) the likelihood of apprehension, fear or surprise is reduced by a display of legitimate police authority at the roadblock; and (4) vehicles are stopped on a systematic, nonrandom basis that shows drivers they are not being singled out for arbitrary reasons.

a. The Location of the Checkpoint on a Private Access Road

As a key factor, it behooves us to look first at the location of the checkpoint in this case. The guard booth—to wit, the checkpoint—where all vehicles entering the Maryland House of Correction are required to stop is on a private access road leading from Maryland Route 175 to the House of Correction. The guard booth or checkpoint is approximately 300 yards from Route 175 along that access road. For at lest 250 yards of that 300-

yard approach, the visitor is on the private property of the Department of Corrections. Beyond the guard booth, it is approximately a quarter of a mile further to the House of Correction itself.

We find highly persuasive the decision of the Illinois Court of Appeals in *People v. Turnbeaugh*, 116 Ill.App.3d 199, 71 Ill.Dec. 862, 451 N.E.2d 1016 (1983), the primary authority relied on by Judge Thieme in this case. *People v. Turnbeaugh* is on all fours with the situation before us. There, as here, the defendant who was stopped had pulled off a state highway onto an access road leading to a correctional facility. In upholding the legitimacy of a stop that was actually more intrusive than the one at bar, the Illinois Court considered a key factor to be the location of the checkpoint. It described that location, 71 Ill.Dec. at 864, 451 N.E.2d at 1018:

> Defendant turned off a state highway onto an access road which leads only to Graham Correctional Center near Hillsboro, Illinois.... Defendant had driven about 50 yards on the access road when he was stopped by guard Garland Reed.... Defendant and Reynolds were ordered to open the glove box, get out of the car, unlock the trunk, and stand aside. The vehicle was then searched by a canine officer using a dog. A clear plastic bag containing cannabis was seized from the console between the seats.

It noted again, 71 Ill.Dec. at 865, 451 N.E.2d at 1019, the significance of the location:

> [I]t is important to note that vehicles travelling on the road which led only to the institution were the only ones subject to search, *i.e.*, the group is self-selected since only those who

choose to go to the institution use that road. (citations omitted).

b. The Abundance of Notice

Another prominent factor in assessing the Fourth Amendment reasonableness of a checkpoint in which motorists are required to stop and give appropriate response is whether the motorist has been given adequate notice that he is approaching such a checkpoint. In approving the sobriety checkpoint in *Little v. State*, Chief Judge Murphy observed, 300 Md. at 506, 479 A.2d 903, "Adequate advance warning of the checkpoint is given; motorists who do not wish to stop may make a U-turn and follow a different route." That was also the case here.

The notice of the approaching checkpoint in this case was abundant. At a point approximately 150 yards along the access route from Maryland Route 175, the first warning sign appears. It is no mere traffic sign in dimensions but is the size of a small billboard. Framed in red and in large, bold capitals is the single word "WARNING." There then follows the stark message, "ALL VISITORS INCLUDING ALL VEHICLES AND OCCUPANTS ARE SUBJECT TO BEING SEARCHED UPON ENTERING OR EXITING THE PREMISES." A short distance further along the road is a second warning sign. Again, the word "WARNING," in all capitals, is framed in red. The message then alerts the approaching motorist of the fact that drug detection dogs are being used: "DRUG DETECTION DOG BEING UTILIZED ON INSTITUTIONAL PREMISES."

Just before the guard booth itself is a traditional octagonal "STOP" sign and the additional special warning: "ALL VEHICLES SUBJECT TO

INSPECTION." To be sure, all but the most far-sighted might have passed the point of no return by the time they could read that third warning. For purposes of the present analysis, however, the third warning was redundant.

Trooper Prince testified, moreover, that after the first two warning signs had been passed, there were still places along the access road where vehicles could easily have stopped and made a U-turn. He referred specifically to "a driveway on the right" and "a pull-off area on the left." He testified that on numerous occasions, vehicles had been observed making U-turns on the access road before reaching the guard booth.

Notice was also a key factor in determining that the detention was reasonable in *People v. Turnbeaugh*. The Illinois Court of Appeals described the notice in that case, 71 Ill.Dec. at 864, 451 N.E.2d at 1018:

> Defendant testified that he "assumed" that he was already on institution grounds when stopped. He had already passed 40 to 45 feet beyond a sign which stated: "ALL PERSONS AND VEHICLES ENTERING OR LEAVING THE GRAHAM CORRECTIONAL CENTER ARE SUBJECT TO SEARCH AT ANYTIME. ANY PERSON FOUND IN POSSESSION OF CONTRABAND WILL BE PROSECUTED."

It went on to comment upon the significance of that notice, 71 Ill.Dec. at 865, 451 N.E.2d at 1019:

> Also significant is that visitors to the institution were warned at the point of entry by a prominent sign stating that they and their vehicles would be subject to search at any time if they continued on into the institution. Such notice bears upon the reasonableness of the selection process: Because the group subject to

> search is self-selected by their decision to enter the institution, it is important that this decision be made with knowledge of the risks attendant upon further pursuance of their chosen course of conduct and with an opportunity to leave behind anything which might be embarrassing or incriminating if discovered. (citation omitted).

c. The Absence of Arbitrary Discretion in the Police

A key factor in assessing the reasonableness of a checkpoint is whether all persons will be stopped or whether the selection of those to be checked is left to the discretion of the officers manning the checkpoint. The Court of Appeals in *Little v. State*, 300 Md. at 496, 479 A.2d 903, relied heavily on *United States v. Martinez-Fuerte*, 428 U.S. 543, 559, 96 S.Ct. 3074, 3083, 49 L.Ed.2d 1116 (1976), in finding that the minimizing of such police discretion was a significant factor in determining the checkpoint there under review to be reasonable:

> Motorists using these highways are not taken by surprise as they know, or may obtain knowledge of, the location of the checkpoints and will not be stopped elsewhere. Second, checkpoint operations both appear to and actually involve less discretionary enforcement activity. The regularized manner in which established checkpoints are operated is visible evidence, reassuring to law-abiding motorists, that the stops are duly authorized and believed to serve the public interest. The location of a fixed checkpoint is not chosen by officers in the field, but by officials responsible for making overall decisions as to the most effective allocation of

> limited enforcement resources. We may assume that such officials will be unlikely to locate a checkpoint where it bears arbitrarily or oppressively on motorists as a class.

One of the serious contentions in *United States v. Martinez-Fuerte* with which the Supreme Court had to deal was that only a small percentage of cars passing the checkpoint were subjected to further intrusion and that this singling out process raised the specter of those selected being "stigmatized":

> The defendants arrested at the San Clemente checkpoint suggest that its operation involves a significant extra element of intrusiveness in that only a small percentage of cars are referred to the secondary inspection area, thereby "stigmatizing" those diverted and reducing the assurances provided by equal treatment of all motorists.

428 U.S. at 560, 96 S.Ct. at 3084. That same concern was what caused the Supreme Court to note in *Delaware v. Prouse*, 440 U.S. 648, 663, 99 S.Ct. 1391, 1401, 59 L.Ed.2d 660 (1979):

> [Our] holding does not preclude the State of Delaware or other States from developing methods for spot checks that involve less intrusion or that do not involve the unconstrained exercise of discretion. *Questioning of all oncoming traffic at roadblock-type stops is one possible alternative*. (emphasis supplied).

In this case, *all* vehicles entering the House of Correction grounds were required to stop and to remain immobile long enough for the canine scan to be conducted. There was no Fourth Amendment risk that certain individuals might be singled out arbitrarily and the appellant, indeed, makes no claim in that regard. We

note in this respect that the checkpoint here was reasonable even as was the sobriety checkpoint approved by the Court of Appeals in *Little v. State*. "The regulations severely restrict the discretion of the officers in the field. All vehicles are stopped; there is virtually no risk that motorists will be singled out arbitrarily." 300 Md. at 506, 479 A.2d 903. Thus it was in the case here.

d. Denying the Motorist the Option to Turn Around and Leave

The appellant argues that even as of the moment he was stopped at the guard shack and informed by Trooper Prince of the impending sniff, he should still have been given the option of turning around and leaving. We do not agree.

The societal need to reduce somehow the scourge of narcotics in the state's prison system is a compelling one. To permit a motorist carrying drugs to proceed all the way to the final barrier in order "to get the lay of the land" and then back off if a canine surveillance appeared imminent, with the unburdened option to come back and try again another day, would be an ill-advised disservice to that societal need. To require, on the other hand, a visitor who had progressed thus far into the institutional setting to stand and be subjected to scrutiny would advance that societal purpose in several ways. It would, of course, detect violations of the law *per se*. The knowledge that such a measure was in place, moreover, would deter others from even attempting unlawful smuggling. It was this consideration that caused *People v. Turnbeaugh* to note, 71 Ill.Dec. at 865, 451 N.E.2d at 1019:

> Defendant also suggests that he should at least

> have been given the opportunity to either consent to a search of his car or choose to depart. We disagree. An option to depart rather than be searched would constitute a one-way street for the benefit of the party planning mischief, as there is no guarantee that he would not return later and be more successful.

And cf. State v. Manghan, 126 N.J.Super. 162, 313 A.2d 225, 228-229 (1973).

e. Balancing the Degree of Intrusion Against the Societal Need

The assessment of the reasonableness of a checkpoint necessarily involves a balancing of the degree of the intrusion into individual liberty against the State interest or societal need being served. In *Little v. State*, the Court of Appeals deemed the brief intrusion occasioned by a checkpoint "minimal," particularly when measured against the State's "compelling interest" in combating the problem of drunken drivers:

> Balanced against the State's compelling interest in detecting and deterring drunk driving, the intrusion on individual liberties caused by the checkpoints is minimal. The checkpoints are operated under limitations imposed by clear, carefully crafted regulations approved by high level administrators.

300 Md. at 506, 479 A.2d 903.

The intrusion occasioned by the checkpoint in this case consisted only of requiring that a motorist, already legitimately stopped at a guard shack to answer questions, turn off the ignition and allow his vehicle to remain in place for approximately one minute. We deem such an intrusion minimal.

Balanced against it was a compelling State interest approved by the highest level of governmental authority. Trooper Prince testified that it was the Governor who had requested the State Police to take over the effort to curb the flood of narcotics into the State's correctional facilities. Trooper Prince explained that approximately seventy percent of all inmates tested both at the House of Correction and at the Maryland Penitentiary test positive for some type of narcotic drug. He explained that it was in response to that epidemic problem that the Governor directed the State Police K-9 Unit to move to interdict the illegal transportation of drugs into both the House of Correction in Jessup and the Maryland Penitentiary in Baltimore. That was a clearly articulated policy.

Conclusion

On balance, we hold that subjecting motorists who have already proceeded as far as the last sentry post guarding a sensitive facility to the modest drill of remaining in place for a quick canine surveillance was not an unreasonable defensive measure. To do less would be unthinkable. The evidence was properly not suppressed.

JUDGMENTS AFFIRMED; COSTS TO BE PAID BY APPELLANT.

APPENDIX C

IN THE CIRCUIT COURT FOR
ANNE ARUNDEL COUNTY

STATE OF MARYLAND :

v. : Case Number: K-92-2885

TYRONE JEROME GADSON :

MEMORANDUM OPINION

This matter is before the court on defendant's Motion to Suppress evidence obtained as a result of a search and arrest which occurred on the grounds of the Maryland House of Correction, Jessup, Maryland. On May 21, 1993, arguments were made and the matter was held sub curia. After careful review of the briefs filed in this matter, the arguments made by counsel and relevant case law, this court finds that the search conducted of defendant's vehicle and the actions of the Maryland State Trooper were reasonable under the circumstances.

Defendant Gadson asserts that he drove to the Maryland House of Correction on September 13, 1992, in order to deliver money to a friend confined there. While approaching the prison, Gadson turned onto an access road which lead to the penal institution. Defendant passed several signs warning visitors that they

were subject to search[1] and proceeded to a guard house where his vehicle was stopped by a State Trooper. The State Trooper instructed Gadson to turn his vehicle off and advised the defendant of his intention to search. Defendant Gadson then objected and voiced his interest in leaving the premises. Despite defendant's objection, the State Trooper used a canine unit to conduct a search of the exterior of the defendant's vehicle. The dog alerted the Trooper to evidence of controlled dangerous substances which lead to a more thorough search of the defendant's vehicle in which cocaine and marijuana were found. Defendant was then arrested. Defendant asserts that the search of his vehicle, which was done without his express consent, was in violation of his constitutional rights. While this court was unable to find any Maryland cases addressing this issue, rulings from other states have been very persuasive.

In People v. Turnbeaugh, 451 N.E.2d 1016 (Ill.App. 5 Dist. 1983), an Illinois appellate court was faced with facts very similar to those before this court. In Turnbeaugh, a defendant was convicted of unlawful possession of cannabis and with bringing contraband into a state penal institution. Like defendant Gadson, the defendant in Turnbeaugh was in an automobile which was on an access road which lead to a correctional institution. Approximately fifty yards down the access road the defendant was stopped by a guard and ordered to submit his vehicle for a routine search notwithstanding the fact that the guard testified that he had no reason to

---

[1] Specifically, the signs stated: (1) Warning: all visitors including all vehicles and occupant(s) are subject to be searched upon entering or exiting the premises. (2) Warning: drug detection dogs being utilized on institutional property.

suspect that the automobile or its occupants contained contraband. The subsequent search was conducted with the use of a dog which detected cannabis. Importantly, while on the access road and approximately forty to forty-five feet before the guard house, defendant Turnbeaugh had passed a sign which warned visitors that all persons and vehicles were subject to search.[2]

In determining that the search of defendant Turnbeaugh's vehicle was justified, the Illinois appellate court balanced the competing interests.

> The purpose of the Fourth Amendment proscriptions is to impose a standard of reasonableness upon the exercise of discretion by governmental officials, including law enforcement agents; thus, the permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests.

People v. Turnbeaugh, 451 N.E.2d at 1019, citing Delaware v. Prouse, 440 U.S. 648, 653-54 (1979). In upholding the search in Turnbeaugh, the court was satisfied that the strong interest of the state in keeping contraband out of correctional institutions was sufficient to warrant what the court deemed as a substantial intrusion on the defendant.

In Williams v. State of Florida, 400 So.2d 988 (Fla.App. 1 Dist. 1981), a Florida appellate court, in recognizing the strong interest of the state in preventing

---

[2] Specifically, the sign stated: All persons and vehicles entering or leaving the Graham Correctional Center are subject to search at anytime. Any person found in possession of contraband will be prosecuted.

contraband from entering a correctional facility, upheld a conviction which resulted from the defendant's possession of contraband discovered during a warrantless search when she sought to visit an inmate at a correctional institution. The court found the search reasonable under the circumstances despite the lack of evidence that the defendant even had actual knowledge of the rule which may require visitors at the correctional facility submit to a search of their persons or possessions.

> [T]he search was not unreasonable (and thus, not constitutionally invalid), because the governmental interest to be protected (preventing the introduction of contraband into a prison or correctional facility) substantially outweighs the governmental intrusion of privacy suffered by the Appellant at a time and place where she had only a minimal expectation of privacy.
>
> ***
>
> Thus, as a visitor at the correctional facility, Appellant did not have a reasonable expectation of privacy to be free from some type of search of her person or possessions.

Williams, 400 So.2d at 988-89.

The Turnbeaugh court was also concerned about the scope of the search and its relationship with the state's interest in keeping contraband out of the penal institution. Due to the fact that only those vehicles on the access road which lead exclusively to the institution were subject to search after having traveled passed warning signs posted at the point of entry that they were subject to search, the Turnbeaugh court reasoned that the search was reasonably related in scope to the purpose of the state in keeping contraband out of the institution.

Because the group subject to search is self-

> selected by their decision to enter the institution, it is important that this decision be made with knowledge of the risks attendant upon further pursuance of their chosen course of conduct and with an opportunity to leave behind anything which might be embarrassing or incriminating if discovered.

Turnbeaugh, 451 N.E.2d at 1019.

This court is satisfied that the strong interest of the State of Maryland in keeping contraband out of the House of Correction is sufficient to warrant the intrusion experienced by the defendant. Additionally, because only those vehicles which were on the access road which lead to the Maryland House of Correction were subject to search and considering the fact that those vehicles would have already passed the signs warning that all visitors are subject to search, this court believes that the scope of the search is reasonably related to the State's interest.

Defendant Gadson further argues that the search of his vehicle was in violation of his rights because he should have been allowed an opportunity to depart without being searched when he no longer intended to pursue admittance. This court does not agree with the defendant but rather concurs with Justice Kasserman's reasoning in Turnbeaugh where he recognized that "[a]n option to depart rather than be searched would constitute a one-way street for the benefit of the party planning mischief, as there is no guarantee that he would not return later and be more successful." Id., citing State v. Manghan, 313 A.2d 225, 228-29 (N.J. 1973). See also People v. Dowthard, 554 N.E.2d 816 (Ill.App. 3 Dist. 1990), where an Illinois appellate court found that a person only intending to deliver a message to an inmate at a correctional institution was deemed to be within that

institution despite being in the second floor entrance foyer area.[3]

Defendant Gadson had ample opportunity prior to approaching the guard house in which to exercise his option not to proceed with his visit to the Maryland House of Correction. Accordingly, this court finds no merit to defendant's argument that the [sic] he must be allowed an opportunity to depart without interference at the very moment the defendant realizes that his covert plan to import contraband into the institution may be revealed.

Based on the foregoing, it is this 10 day of June, 1993, ORDERED that defendant's Motion to Suppress is hereby DENIED.

/S/
Raymond G. Thieme, Jr., Judge

[3] The defendant in Dowthard had passed a sign warning visitors that they were subject to search.